

THE POLITICAL IDEAS AND ACTIVITIES

OF

SIR JAMES MACKINTOSH (1765-1832):

A STUDY IN WHIGGISM BETWEEN 1789 AND 1832

Ph D
942

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PREFACE

The legacy of the Scottish Enlightenment to British politics is an unexplored field; this study of James Mackintosh is intended as a minor contribution to research in this area. In spite of his absorption in the politics and society of London, Mackintosh never entirely lost his affinity with the outlook bred in the Scottish universities; it will be argued that this marked him out, on the one hand from the leadership of the Whig party, and, on the other, from the Benthamite radicals. His closest links were perhaps with the Edinburgh Reviewers. There is a distinctive viewpoint to be identified here; but the problem is not merely to identify it, but also to explain its failure to respond to the political and social challenges of the age. The promise of the late eighteenth century had yielded very little; by the 1830's the initiative was decisively in the hands of the utilitarian radicals.

There is no modern biography of James Mackintosh. Very soon after his father's death, Robert Mackintosh, and his brother-in-law, William Erskine, brought out the Memoirs of... Sir James Mackintosh (1). The Memoirs are a useful, but highly selective compilation of material from Mackintosh's journals and correspondence, giving disproportionate space to the period of his residence in India. They are naturally reverent, and are uninformative on Mackintosh's later years. Better

1 Memoirs of the life of... Sir James Mackintosh. Edited (from his letters and journals) by his son. 2 vols. London 1835. I have used the second edition, 2 vols, London 1836, cited below throughout as Memoirs.

William Erskine (1773-1852) was educated at Edinburgh, then Hornsey, Brougham, and Thomas Brown. Erskine went out to India in 1804 as Mackintosh's secretary, and married his daughter Maitland; Erskine became a distinguished historian and orientalist. See the Supplement to the Dictionary of Biographical Literature, and below, Ch. VI, 211.

Erskine was largely responsible for the selection made from Mackintosh's papers. See his diary, B.M. MSS 3945 ff. 29-36, and the corroboration by Sydney Smith. Charles Greville Journal of the reign of King George IV, King William IV, and Queen Victoria edited by Henry Reeve. 8 vols. London 1888. III, 824.

portraits were left by other contemporaries, especially by Francis Jeffrey (1). The hostile and inaccurate life of Mackintosh by William Wallace also tells the duel between the author and Mackintosh (2). With very few exceptions, Mackintosh has altogether escaped the fate of later writer (3). Donald R. Heath has studied Mackintosh' parliamentary career in depth, from the available printed sources (4). Professor Radzinowicz has dealt authoritatively with his legal work (5).

However, the opening of the Mackintosh Papers, now in the British Museum, and the exploration of other manuscript material, have made it possible to consider Mackintosh's intellectual development, and his political career, in some detail. (6) The aim here has been to trace through the activities, writings, and language of a minor political figure, a particular framework of thought. It is not suggested that Mackintosh was a model of political consistency, or that he had at any time a set of integrated political beliefs; but his opinions, prejudices, reactions, even his rationalizations, were formed in a certain conventional mode (7). The identification of this conceptual framework can be undertaken only through a study of

1 F. Jeffrey 'Memoirs of Sir James Mackintosh', Edinburgh Review, LXII October 1835, 205-55; see also W. M. Macaulay, 'Sir James Mackintosh's History of the Revolution', Edinburgh Review, LXI, July 1835, 265-322; J. Hazlitt 'Sir James Mackintosh', in The Spirit of the Age, or Contemporary Portraits. World's Classics edition. London 1966, 145-159; T. de Quincey 'Glance at the Works of Mackintosh', The Collected Writings of Thomas de Quincey. Edited by David Masson. 14 vols. London, 1896, 7. VIII, 127-56.

2 J. Wallace (ed.) History of the Revolution in England in 1688... to which is prefixed a notice of the Life, Writings, and Speeches of Sir James Mackintosh London, 1834; G.O. Trevelyan The Life and Letters of Lord Macaulay, 2 vols, Oxford, 1961. I. 433-5.

3 One exception was W.H. Lytton Bulwer. See his Historical Characters: Mill, Paine, Cobbett, Mackintosh, Canning. 2 vols. London 1868. II, 1-96.

4 Donald R. Heath 'The Parliamentary Career of Sir James Mackintosh'. Unpublished Ph.D. dissertation, University of Kentucky, 1965. (Read on microfilm)

5 L. Radzinowicz A History of English Criminal Law. 4 vols. Cambridge 1948 - I.

6 The Mackintosh Papers are now in Add. MSS 5243-52451; they are unfoliated.

7 See, for discussion of the way in which the political historian may approach the history of ideas, R. Elton Political History. Principles and Practice London 1970. 43-53.

Mackintosh's writings and speeches, in the context of his political situation. The foundations had been laid at Aberdeen and Edinburgh, and these are sketched in Chapter I. In Chapter II - V, the interest is focussed on Mackintosh's changing attitude towards radicalism and reform, as he himself achieved moderate worldly success. His response to the entirely different situation met in India is treated separately. In Chapters VII - X, Mackintosh's interest in European politics, and his historical and philosophical work, have, for convenience, been considered apart from his parliamentary career after 1812. Although his achievements were small, Mackintosh's reputation in this period was high; an explanation of this should help to clarify one of the conventional elements in political debate, the characteristically high view, in the years leading up to 1832.

I THE SCOTTISH INHERITANCE

The early years of James Mackintosh's career must be considered against a complex background of historical change; the years between 1760 and 1830 saw, in Scotland as in England, fundamental economic and social developments, and, in Scotland, a quite unprecedented cultural flowering. In the Highlands an almost archaic tribalism survived into the 1760's and 1770's, yet economic pressures almost everywhere threatened this pattern of existence.⁽¹⁾ At the same time, awareness of the provincialism of their style of life encouraged the landed classes to raise their own standards of living and to look to the English example as a model and a magnet. Their pretensions rapidly outran their resources; if their resources failed altogether, emigration was an ever-present answer.⁽²⁾ A study of Mackintosh's early years reveals both his experience of a decaying and antique way of life, and his intellectual experiences at Aberdeen and Edinburgh, where he was able to take in at first hand that preoccupation with the scientific study of man and society that so characterised eighteenth century Scottish thought.

The branch of the Mackintosh family to which he belonged - Mackintosh of Kellachie (various spellings) - was the eldest cadet branch of Mackintosh; references to the estate of Kellachie can be found as far back as 1456.⁽³⁾ It was not a large property, having in 1778 about 50 tenants; in 1780 the rental brought in was £157.18.3½,

1 M Gray The Highland Economy 1750-1850 Edinburgh, 1957, 11-18; T.C. Smout A History of the Scottish People 1560-1830, London, 1969, 332-351.

2 J. Clive and B. Bailyn 'England's cultural provinces: Scotland and America', William and Mary Quarterly, Third series, XI, 1954, 200-13; J. Clive 'The Social Background of the Scottish Renaissance', in N.T. Phillipson and Rosalind Mitchison (ed.) Scotland in the Age of Improvement, Edinburgh, 1970, 225-244.

3 For a full discussion of the genealogy of the Mackintoshes of Kellachie, see C. Fraser-Mackintosh 'The Mackintoshes of Kellachie, styled Sliochd Alain', Transactions of the Gaelic Society of Inverness, XIX, 1893-4, 98-115.

and although by 1788 this had risen to 222.10.1 $\frac{1}{2}$, after this, for various reasons, income from the estate declined.⁽¹⁾ Like so many other Highland estates, Kellachie was subject to the heavy burden of annuities payable to dependents of former proprietors, since it had passed rapidly through the hands of several owners. According to one source, Eliza, the widow of Alexander Mackintosh (d. 1772) life-remed the estate until 1790, during which time Alexander's brother, James Mackintosh of Woodend (d. May 1778), James' two sons Captain Angus (d. 1779), and Captain John (d. May 1788) and Captain John's son, then Dr. James Mackintosh, succeeded as lairds of Kellachie, though deriving very little benefit from the land.⁽²⁾ Captain John Mackintosh entered the army very young, and with his brother Angus, served in Germany during the Seven Years War, and was wounded at the battle of Feilinghausen. He married a Marjory Macgillivray, the daughter of Alexander Macgillivray and Anne Fraser, through whom young James Mackintosh was related to Dr. Fraser, with whom he stayed on first coming to London, and to Mrs. Fraser Tytler, later Lady Woodhouselee.⁽³⁾ James Mackintosh was born in 1765, and was the eldest of three children; the family resided with their grandparents. Captain John Mackintosh left for Antigua soon after James' birth, and did not return home till 1783. He seems to have been fairly

1 State of John Mackintosh's Intromissions with the Rents of Kellachie. The family papers relating to the estate of Kellachie are to be found in the Fraser-Mackintosh collection, Scottish Record Office. This collection is as yet uncatalogued; all the references quoted here are to documents found in Box 48.

2 Fraser-Mackintosh 'The Mackintoshes of Kellachie'. Trans. Gaelic Soc. Inverness, XIX, 107-9

3 R.J. Mackintosh (ed) Memoirs of the Life of the Right Honourable Sir James Mackintosh 2 vols., London, 1836, I, 2. The best source for Mackintosh's early development is in fact the memoir drawn up by himself, in 1805, and printed by R.J. Mackintosh in the Memoirs, I, 1-29. The original is to be found in B.M.Add. MSS 52436.

indifferent to the needs of his family and to have ignored all appeals on their behalf from his brother and others; all such appeals included references to young James' outstanding progress in school and the need for some decision on his future. Angus Mackintosh wrote to his brother:

James was here lately - is very well, and as Smith writes me makes a great progress in his education. His landlord made a demand for his board and tho' Cash is extremely scarce with me, I sent Smith £5. (1)

Even while on active service in America he recalled his promising nephew:

I am happy to hear your little family is well. Why do you not mention their mother? I flatter myself she is well as you do not say otherwise. Pray do not forget my love to her & to your dear Boys and lassie. I ever persuaded myself Jamie would do well & am extremely happy he does not disappoint my Expectations. I hope, if I live, to be one day of service to him. (2)

Angus, despairing of his brother, left him only the life-interest on such capital as he had to leave, which was to pass absolutely to young James.⁽³⁾ According to legend, 'the name of Jamie Mackintosh was synonymous over all the countryside with a prodigy of learning';⁽⁴⁾ he himself later recalled his particular taste for theological controversy, and his early heretical advocacy of free-will against the Calvinist orthodoxy of the schoolmaster and minister. He attended a small academy in the town of Fortrose, near Inverness, under a master of whose abilities he retained a favourable impression.⁽⁵⁾

1 Angus Mackintosh to Capt. John Mackintosh 26 February 1776. Fraser-Mackintosh collection. For some further details of James Mackintosh's expenses at school, see Notes and Queries, I, xi, 8.

2 Angus Mackintosh to Capt. John Mackintosh, 20 August 1777. Maryland - head of the river. Fraser-Mackintosh collection.

3 Will of Capt. Angus Mackintosh, 13 February 1779, Fraser-Mackintosh collection.

4 Memoirs, I, 7; and for similar reminiscences from a boyhood friend, later Sir James Grant, see J. Douglas Glimpses of Old Bombay and Western India, London, 1902, 63.

5 Memoirs, I, 3.

Even before he was thirteen, he had become passionately interested in political issues, and especially in the cause of liberty in America; he persuaded the other schoolboys to hold mock debates on political events.⁽¹⁾ The active service seen by both his father and his uncle must have encouraged his lively interest in the progress of the American war.

But the problem of his future education was one that concerned his mother most deeply, and in February 1778, she wrote to her husband urging him to think about securing some kind of position for James; in one of his very few letters to her, he pleaded his inability to act, and his confidence in young James' own ambition:

Alas my dear & beloved friend you from your affect & maternall anxiety & goodness towards our dear & most beloved Babs lay down plans for them & us which it is my misfortune & unhappiness to say is out of my power to carry into execution & some of which are in themselves impracticable suffice it to assure you that could the last drop of my hearts blood be of service to them & to my most valued and dearest friend I could w. pleasure submit to lose it, & should not reckon it a sacrifice, but on the reverse my greatest glory & merit. As to your mentioning Jamie's going wh a Burse to College I have not an idea of it at present nor any of his going there at all. Mrs. F. (2) wants to get him out as a Writer to the East Indies which if it could be done I should look on as the most feasible Plan for him that could be hit on, I much mistake my sweet fellow if he is not possessed of some ambition as well as solidity, & to tie him down to a little situation to please ourselves would in my mind be too selfish & unjust to him & if Wee in the situation you wish for him saw him afterwards unhappy would it not my beloved friend most justly be the cause of embittering the evening of our days...(3)

1 Memoirs, I, 8

2 Mrs. Fraser, James' aunt

3 Captain John Mackintosh to Mrs. Mackintosh. Dublin, 7th July 1778. Fraser-Mackintosh collection.

More letters from Mrs. Mackintosh followed; James continued to attend the Fortrose school, although he had long since advanced too far in his work to gain anything from the schoolmaster. His mother was by 1779 considering joining her husband from whom she had heard nothing:

My dearest friend does not know what misery he brings on me, by his Neglect; it is impossible for me to tell what I feel for my Famaly & that I have it not in my power to take care of them, in one way or another - if you think it most proper for them to goe about with the regiment, god who knows my heart knows but for there sakes it wo'd be more agreeable to me & nor would anything but there education make me stay anywhere but with my dearest John. (1)

Her financial situation was becoming desperate:

I wrote you that I had taken a few rooms for myself, as I really did not know at the time any other plan for my family. Mr. Smith's (2) death made it necessary for me to remove James out of his present quarters. It has been very hard on me not to have it in my power to pay his Board and many other things that I cannot want. I wish you to make a setillment. I could not ask anything of the good bailie, as you never wrot him or settled anything...

I cannot forgive you for not writing James and think about him he will be set to go to Aberdeen this winter if you think you could send him I approve of his going. I wish you coud for I have a great ambition to have him properly educated, as his genious is so good if we coud afford it I should like hime to be bread to the law or physick. (3)

In these circumstances the fact that James eventually reached Aberdeen was due very largely to the offices of the 'good bailie', John Mackintosh, later of Aberarder, a merchant of Inverness, cousin and

1 Mrs. Mackintosh to Captain John Mackintosh, 2 August 1779, Fraser-Mackintosh collection.

2 Mr. Smith, the master at Fortrose, with whom James had been boarding.

3 Mrs. Mackintosh to Captain John Mackintosh, 11 August 1779, Fraser-Mackintosh collection.

man of affairs to the owners of Kellachie; Bailie John Mackintosh managed the affairs of both Captain John Mackintosh and his son with amazing patience and devotion, receiving very little thanks for his exertions. In 1779 Angus Mackintosh died in South Carolina, and his brother succeeded to the burdened property, and to the life-interest on Angus' capital; John Mackintosh did not, however, in spite of the Bailie's appeals return to Scotland to settle his financial situation, but, joined by his wife, went with his regiment to Gibraltar, where they stayed throughout the siege. Mrs. Mackintosh died there in 1781.

Bailie John Mackintosh advanced the money for James to go to King's College Aberdeen, where he was admitted in 1780, with John Leslie and James Dunbar as Regents for his class.⁽¹⁾ King's College was the last in Scotland to retain the system of 'regenting' in which a single master took responsibility for a class of students throughout their entire course. This legacy from the medieval curriculum had been abolished in all other Scottish universities at the beginning of the century, and in Marischal College Aberdeen in 1753. King's College followed Marischal in reforming the curriculum, but, largely owing to the conservative influence of Thomas Reid, Regent of King's College at the time, failed to introduce any system of individual

1 P.J. Anderson (ed.), Roll of Alumni in Arts of the University and King's College Aberdeen 1596-1860, Aberdeen 1900, 97. For a portrait of Leslie, see J.G. Burnett 'John Leslie: an Aberdeen Professor of the Eighteenth Century', Scottish Historical Review, XIII, 1916, 30-46. James Dunbar (?-1798) was a 'regent' of King's College Aberdeen for thirty years; he published Essays on the History of Mankind in rude and uncultivated ages, London 1780, D.N.B.

professorial teaching. The syllabus introduced in 1753 provided for the teaching of logic and moral philosophy only in the fourth session of the course; speculation was to be based upon a solid foundation of experimental knowledge. The changes therefore reflected very broadly the philosophical movement from the deductive to the inductive approach. Classical studies were important, but according to the curriculum students should also have been taught advanced mathematics and natural philosophy, which included mechanics, hydrostatics,⁽¹⁾ pneumatics,⁽²⁾ optics, astronomy, magnetism, and electricity.⁽³⁾ The retention of the regents, however, vitiated any scheme of this kind, as Mackintosh recorded:

The second winter, according to the scheme of tuition at King's College, I fell under the tuition of Dr. Dunbar, author of 'Essays on the History of Mankind', &c; and under his care I remained ~~untill~~ I left college. He taught mathematics, natural and moral philosophy, in succession. His mathematical and physical knowledge was scanty, which may, perhaps, have contributed to the scantiness of mine. In moral and political speculation, he rather declaimed, than ~~communicated~~ ^{communicated} (as he ought) elementary instruction. (4)

Mackintosh's recollections show that he had little benefit from Dr. Dunbar's instruction, remembering rather his liberal political outlook; Dunbar's own work was mediocre and unoriginal. The lectures of William Ogilvie, which he also attended, seem to have made a greater impression. Ogilvie is best known as the author of An Essay on the Right of Property in Land (1780), an early discussion

1 Hydrostatics: a branch of physics dealing with the pressure and equilibrium of liquids at rest. Oxford English Dictionary.

2 Pneumatics: a branch of physics dealing with the mechanical properties of air, or other elastic fluids, or gases. O.E.D.

3 J.M. Bulloch, A History of the University of Aberdeen 1495-1895, London 1895, 147-54; R.S. Rait, The Universities of Aberdeen, Aberdeen 1895, 201-3; P.J. Anderson, Notes on the Evolution of the Arts Curriculum in the Universities of Aberdeen, Aberdeen 1908, 8-10.

4 Memoirs I, 12.

of agrarian communism. Later he was to correspond with his old pupil on the system of landholding in British India. But at Aberdeen he lectured in classical literature, and, even fifty years later, these lectures were remembered by Mackintosh as outstanding.⁽¹⁾

Perhaps of greater importance to Mackintosh at the time was his friendship with Robert Hall, later a leading dissenting clergyman. In spite of widely divergent interests, a taste for metaphysical and theological controversy drew them together; a circle known as the 'Hall and Mackintosh club' grew up around them, a circle especially noted for its support of liberal principles. A contemporary later recalled that after the debates he had taken part in at Aberdeen with Mackintosh, there was something very familiar about the principles of the Vindiciae Gallicae.⁽²⁾ The examination which was taken at the end of the four year course for the degree of M.A. was of very doubtful value,⁽³⁾ but in spite of his disavowals Mackintosh distinguished himself, graduating on 30 March 1784.⁽⁴⁾ Looking back, he recalled leaving Aberdeen 'with little regular and exact knowledge, but with considerable activity of mind and boundless literary ambition'.⁽⁵⁾ A testimonial of his success was given to his father by an old friend;

By what I have already of Mr McIntosh I can safely congratulate you upon such a son - He is, indeed, a very extraordinary young man - In his literary studies he is highly accomplished & what is equally surprising, & perhaps of equal importance in life, the propriety and elegance of his manners are such, as to attract the notice of every person, who is but for a moment in his company. ⁽⁶⁾

1 Memoirs, I, 17; Notes and Queries I, iii, 489. For their later correspondence, Ogilvie to Mackintosh 5 January 1805, B.M.Add. MSS 52451; Mackintosh to Ogilvie 24 February 1808; Memoirs I, 381-6

2 Principal W. Jack to Lord Gillies, 15 October 1832, B.M.Add. MSS 52453; partially printed Memoirs I, 15-17.

3 Anderson, Notes on the Evolution of the Arts Curriculum, 10

4 P.J. Anderson (ed.) Officers and Graduates of University and King's College Aberdeen, 1495-1860, Aberdeen 1893, 258.

5 Memoirs I, 20

6 Major James Mercer to Captain John Mackintosh, 7 December 1783, Fraser-Mackintosh 'The Mackintoshes of Kellachie', Trans.Gaelic Soc. Inverness XIX, 112.

The family's financial situation, however, was still very serious. While in Gibraltar Captain John Mackintosh had drawn very heavily indeed on what credit he had with Bailie John Mackintosh; the tenants at Kellachie were becoming restive and refusing to pay their rents.⁽¹⁾ Moreover, the famine which hit this part of Scotland in 1783 had to be faced, with all its consequences.⁽²⁾ During 1783, Captain John Mackintosh returned home and settled in Inverness; while in London, however, he contracted a totally disreputable marriage, from which he had to be extricated by the financial arrangements of Bailie John Mackintosh, who reviewed his unhappy cousin's situation in a long letter to a London correspondent:

In the course of 6 or 7 months I have paid £388/4/6 for draughts of his on me from Gibraltar & he was due me when he went to that place about £140 money advanced him at different times. Those sums with the expence of his childrens education for the last four years every shilling of which I have advanced & above £100 I have advanced him since he come north have exhausted every shilling he was entitled to in this country & he is now almost £160 in my debt. Notwithstanding which I am still obliged to be advancing the expence of sending his elder son to Aberdeen in a few days & his own ordinary expences.

He did not expect any improvement; Captain John's character was too hopelessly indolent and irresolute for him to take any vigorous steps to clear up his affairs.⁽³⁾ Captain John was, however, ready to make some effort on his son's behalf, since, as he wrote:

it would be worse than death to me was James to be neglected at this time when alas he feels too much for the undignified conduct of his wretched father. ⁽⁴⁾

1 James Mackintosh (factor at Kellachie) to Bailie John Mackintosh 23 December 1782, Fraser-Mackintosh collection.

2 Sheriff Fraser to Captain John Mackintosh, 11 December 1783, details the relief measures taken in the area; the demand was so great that only a single boll of meal could be spared for Kellachie. C. Fraser-Mackintosh (ed), Letters of Two Centuries, chiefly connected with Inverness and the Highlands, from 1616 to 1815, Inverness, 1890, 304. There is evidence that the famine and the miseries of the Highlanders in that year had a considerable impact on the young James Mackintosh; Memoirs I, 77

3 Bailie John Mackintosh to Allan Mackintosh, 6 November 1783, Fraser-Mackintosh collection.

4 Captain John Mackintosh to Bailie John Mackintosh, 7 November 1783, loc.cit.

Again it was left to the Bailie to arrange that James should go to Edinburgh, on the relatively generous allowance of £50 a year 'which may be more (all circumstances of your Father's and your own considered) than can with propriety be given'.⁽¹⁾ By this time James Mackintosh had settled on medicine as his future career; his inclination was, even then, for the Bar, but this was apparently thought too expensive.⁽²⁾

However, at Edinburgh his choice of medicine by no means precluded him from following his speculative bent. The medical school there was easily the greatest centre of medical teaching in the country at the time; its growth dated from the 1720's, when Alexander Monro primus, a pupil of Boerhaave of Leyden, introduced new methods of clinical instruction into the University. The later foundation of the Royal Infirmary meant that the students were given access to patients, and that dissection became possible as a part of the teaching.⁽³⁾ The lists of members of the Royal Medical Society show that students came from all over England, from America, the West Indies and Russia to Edinburgh.⁽⁴⁾ Medical teaching there was marked by lively debate on rival methods and philosophies of medicine; the Royal Medical Society became the students' forum for such controversies. The differences of opinion between William Cullen and John Brown, on the fundamental causes of disease, caused feelings to run extremely high

¹ Bailie John Mackintosh to James Mackintosh, 18 January 1785, loc.cit.

² Memoirs I, 20

³ James Gray, A History of the Royal Medical Society, 1737-1937, edited by D. Guthrie, Edinburgh, 1952, Ch. I; J.D. Comrie, History of Scottish Medicine, 2nd edition, 2 vols., London 1932, I, 306-7.

⁴ General List of the Members of the Medical Society of Edinburgh Edinburgh 1877.

among students, even to the point of duelling.⁽¹⁾ Brown's theory, to which Mackintosh admitted himself to have been an instant convert, was based on the phenomenon of excitability, that is, that disease was caused by excessive or inadequate stimulation of the system. Its attraction lay in the fact that 'while it was the most complete metaphysical theory of medicine ever evolved, it seemed to justify itself in practice'.⁽²⁾ William Cullen, who became Professor of Medicine at Edinburgh in 1773, had, in a sense, prepared the ground for the temporary success of Brunonianism, by his frequently expressed hope that major advances in medicine would come from some new generalisation able to resolve all phenomena into a single explanation; his own speculations were, however, generally restrained by a sounder judgement than Brown's.⁽³⁾

Mackintosh attended the lectures of Cullen, James Gregory, the Professor of Physiology, Alexander Monro secundus, the Professor of Anatomy, and of Joseph Black, the great chemist, among others;⁽⁴⁾ he also went to the lectures in Natural History given by John Walker,

1 'The palaestra, where their contests were maintained with the greatest violence, was the Royal Medical Society. Here the partisans of both doctrines used to assemble weekly; and the debates on each side were conducted with such ~~vehemence~~ ^{vehemence} and intemperance, that they very commonly terminated in one member calling out another to the field.' William Cullen Brown (ed.) The Works of Dr. John Brown to which is prefixed a biographical account of the author, 3 vols., London 1804, I, lxviii-lxix; Memoirs I, 25-6

2 Gray, History of the Royal Medical Society, 51-2; Comrie, History of Scottish Medicine, I, 314-5

3 Sir Alexander Grant The Story of the University of Edinburgh during its first three hundred years, 2 vols., Edinburgh 1883, II, 393-5, 402-4; D. Guthrie 'William Cullen M.D. and his times' in A. Kent (ed.) An Eighteenth Century Lectureship in Chemistry. Essays and Bicentenary Addresses relating to the Chemistry Department of Glasgow University (1451), Glasgow 1950. See also, on Cullen and the rival philosophies of medicine, Lester S. King The Medical World of the Eighteenth Century, Chicago 1958, 139-147; Robert E. Schofield Mechanism and Materialism. British natural philosophy in an age of reason, Princeton 1970, 191-231.

4 Unpublished Matriculation Rolls of Edinburgh University; for the teaching of Gregory, Monro, and Black, see Grant op.cit. II, 404-6, 387-9, 395-7; on Black, see also J. Read 'Joseph Black M.D., the teacher and the man', in Kent (ed.) An Eighteenth Century Lectureship.

and those of the Professor of Botany, John Hope, an enthusiastic admirer of Linnaeus, although neither course was essential for a medical degree.⁽¹⁾ It is clear, however, that he was more preoccupied by student activities than by the formal requirements of the course. He was admitted to the Royal Medical Society on 19 April 1785,⁽²⁾ and among his fellow members were Dr. T.L. Beddoes,⁽³⁾ Thomas Addis Emmet,⁽⁴⁾ John Haslam,⁽⁵⁾ T.C. Hope,⁽⁶⁾ and Thomas Christie.⁽⁷⁾ Probably Mackintosh had attended the meetings of the Society from his arrival in Edinburgh; but he had had to overcome the reluctance of Bailie John Mackintosh to sanction the payment of the subscription.⁽⁸⁾ In 1785 James Mackintosh and John Haslam were the leading spirits in forming the 'Associated Students', with Thomas Beddoes as their chairman; the association was established as a result of a dispute between the Managers of the Royal Infirmary and the students.

1 On Walker, the Professor of Natural History, and John Hope, see Grant *op.cit.*, II, 432-3, and 382.

2 General List of Members of the Medical Society of Edinburgh.

3 Dr. T.L. Beddoes (1760-1808), chemist and physician., D. 1787, 1788-92 Reader in Chemistry at Oxford; founded Pneumatic Institute at Clifton, with the help of Thomas Wedgwood and others, to investigate the medical uses of gases; assisted there by Humphry Davy and James Watt. D.N.B.

4 Thomas Addis Emmet (1764-1827), Physician in Dublin; barrister; leader of the United Irishmen; political prisoner 1799-1801; advocate in New York; he became Attorney General of the State of New York in 1812. D.N.B.

5 John Haslam (1764-1844), Apothecary at the Bethlehem Hospital, admitted to the Royal College of Physicians in 1824; distinguished for his ideas on the treatment of the insane, of which he wrote a number of works earning him a wide reputation. D.N.B.

6 T.C. Hope (1766-1844) M.D. 1787, assistant Professor 1795-9, and Professor of Chemistry and Physic at Edinburgh (1799-1844); the first teacher in Britain to substitute the chemistry of Lavoisier for the phlogiston theory; J. Kendall 'Thomas Charles Hope M.D.' in Kent (ed.) *An Eighteenth Century Lectureship*: D.N.B.

7 Thomas Christie (1761-96) born Montrose, journalist in London 1784, attended medical classes Edinburgh 1786-7, but soon gave up medical career; in 1789 he founded the *Analytical Review*, with the publisher J. Johnson, and visited Paris; he wrote several pamphlets in favour of the French Revolution, and in 1792 was employed by the National Assembly to translate their constitution into English. D.N.B.

8 Bailie John Mackintosh to James Mackintosh 18th January 1785, Fraser-Mackintosh collection.

A hasty resolution regulating the hours of admission for the students attending the Infirmary, and implying general censure upon the whole body for some individual instances of misconduct, produced a strong spirit of resistance on the part of the latter, who conceived their privileges invaded.

A committee of eight, of whom Mackintosh was probably one, was set up; the organisation was maintained for a few more years for the defence of the students' rights. The principles of peaceful combination were, it seems, recognised by the authorities, who received representatives from the students.⁽¹⁾ With Haslam and two others, Mackintosh was elected as a President of the Society for the session 1786-7. After 1784, the Brunonian controversy had dwindled; but about this time the Society showed increasing interest in physiological experiment. In 1785 a laboratory was fitted up for them and a committee appointed:

'to purchase different philosophical instruments, particularly an electrical machine, thermometers, barometers, and other instruments for meteorological observations.'

Rooms were made available to members for private dissection and chemical experiments.⁽²⁾ Mackintosh also joined the Natural History Society, in January 1785, in common with almost all his fellow medical students, and was in December 1786 elected President of this also.⁽³⁾

The weekly meetings of these student societies centred on papers read by individual students. Mackintosh presented a paper on

1 Gray History of the Royal Medical Society, 77-9.

2 Ibid, 62.

3 Laws of the Society constituted at Edinburgh MDCCLXXXII for the Investigation of Natural History, Edinburgh 1803.

Intermittent Fever to the Royal Medical Society,⁽¹⁾ and one on the origins and instincts of animals to the Natural History Society, on 23rd February 1786.⁽²⁾ Their interest now lies chiefly in the methodological asides, of which there were many. His treatment of Marsh Fever, for example, is marked throughout by impatience with the slowness of the inductive process, while at the same time he criticises the more elegant Brunonian theory for its narrowness.⁽³⁾ He concluded by arguing for the value of hypothesis, which might, because of the imperfections of medical knowledge, be backed by insufficient data, but was still ultimately the only means of progress - and he quoted both Burke and Bacon to support his views. It may be noted that the essay on animals shows every sign of adherence to the theory, held even more firmly in the eighteenth century than in the seventeenth, of the immutability of species, fixed in their places in the Great Chain of Being; the influence of Linnaeus was probably responsible for a certain hardening of ideas on this point.⁽⁴⁾ The second half of the century showed a gradual transformation of the chain into a ladder; but even Lord Monboddo was aiming rather at filling the vacant niches in the graded scale of nature, than at any conception of evolutionary progress from one species to another.

1 Dissertations of the Royal Medical Society, 20, xvii, 204-16; (read while on temporary loan to Edinburgh University Library).

2 Summarised in Memoirs, I, 35-7; R.J. Mackintosh evidently had access to Vol. V of the Dissertations of the Natural History Society, which is now missing.

3 Dissertations, loc.cit., 20, xvii, 214; 'Of the doctrine which derives diseases from increase and diminution of action the excellence is simplicity; and the defect narrowness. It cannot be denied by its enemies the praise of elegance and precision; and it ought to be confessed by its friends that it frequently requires somewhat too much subtlety in its application - and that it sometimes presents temptations to torture facts which are difficult to resist.

The excellencies and defects of the other doctrine are directly the reverse. It embraces incomparably more facts; but adopts, of necessity, many more principles.'

4 William Cullen, strongly influenced by Linnaeus' methods, made significant advances in 'nosology', the science of classifying diseases. King Medical World of the Eighteenth Century, 215-9.

The popularity of the theory, however, did mean that man was seen very much in relation to his proper place in the animal world. In his brief essay, for example, Mackintosh classifies four classes of animal intelligence:

Under the fourth may be arranged those animals, the evolution of whose minds is slow, and who gradually attain to superior excellence. To this class belong 'man and his kindred animals, extending from Newton to the elephant'. (1)

The very question on which he is writing is a comparison of the faculties and instincts of animals and humans. This fixity of species was in no way inimical to a study of human progress; it was rather conducive to it in that the evolution of each particular species was regarded teleologically, so that all the potentialities of Being in each case could be realised. And moreover, such a study necessarily involved the study of man within society, which Ferguson, for example, considered the natural state of the species, rather than an artificial formation for the purpose of security; the primary grouping had, of course, to be subdivided and classified into families, tribes, classes and nations. (2)

1 Memoirs, I, 36.

2 For the whole subject see A.O. Lovejoy The Great Chain of Being, Harvard, 1936, passim; H. Butterfield The Origins of Modern Science 1300-1800, London, 1949, 220-3; G. Bryson Man and Society: the Scottish inquiry of the eighteenth century, Princeton 1945, Ch. 3; J.W. Burrow Evolution and Society, London 1966, 10-15, argues that the theorists of the Scottish Enlightenment did in this way provide a framework for the development of evolutionary anthropology, but that this intellectual tradition had no successors; see also Adam Ferguson Principles of Moral and Political Science. Being chiefly a Retrospect of Lectures delivered in the College of Edinburgh, 2 vols., Edinburgh 1792, Vol. I, Part I, Ch. I 'Of Man's Place and Description in the Scale of Being'.

The thesis which Mackintosh submitted for the degree of M.D. was on the subject of muscular movement, 'De actione musculari', and was presented on 12 September 1787.⁽¹⁾ This was a difficult and controversial subject; here too he was very ready to challenge current teaching, this time in a rather better cause. He defended the theory of Albrecht von Haller, that the nervous system alone was responsible for the sensibility of muscle fibres; again this was based on a single concept, that of 'irritability', as a primary property of muscle.⁽²⁾ William Cullen's own teaching had been largely unaffected by Haller, although the latter's work, backed by experimental proof, was to be of great importance throughout the next century. Mackintosh recognised his own temerity:

Cum has opiniones celeberrima haec Academia Foveat,
 candidato honores Medicos ambienti forsitan subtimendum
 est, ne alienis insistenti vestigiis impiae in Almam
 Matrem arrogantiae nota inuratur.

- But he defended his right to hypothesize by quoting from the Areopagitica.⁽³⁾

A scientific education in the eighteenth century, especially at Edinburgh, meant that the student was exposed not only to the rival approaches of scholars, but also to radically different philosophies and ideas on the very essences of life, death and disease. The state of medical knowledge was extremely imperfect, but at the same time students were given ample opportunity to carry out experiments and

1 'Disputatio Physiologica de Actione Musculari, 1787' in Tracts and Speeches by the Rt. Honourable Sir James Mackintosh, privately printed, Edinburgh, 1840, 1-38; although the average number of medical students in Edinburgh at this time was between 400 and 500, only an average of 22 students took the M.D. degree each year. D.B. Horn A Short History of the University of Edinburgh 1556-1889, Edinburgh, 1967, 46.

2 Schofield Mechanism and Materialism, 201-2, describes Haller as 'very much an empiricist'.

3 Tracts and Speeches, 10-11.

to practise dissection; their research was not limited to medicine but extended to all fields of natural history and botany. Their activities were not limited to the round of classes and lectures, since in their own societies they debated and criticised the current doctrines of the leading teachers of France, Holland, and Germany. What they debated were the attempts by these men to construct systems in order to explain the most important physiological phenomena, and, at the same time, the continual need for more research and experiment - and the balance to be kept between the two requirements. Further use had, clearly, to be made of other scientific disciplines, particularly of physics and of chemistry; man had to be seen in his place in the animal kingdom. The fact that James Mackintosh studied medicine at Edinburgh in this period must be noted as related to his consistent empiricism, and to his view of man in society; his part in controversy shows always that his interest lay with the wider implications of the particular subject.

Many of Mackintosh's fellow students were also members of the Speculative Society founded in 1764, which met weekly to discuss literary and political questions. This Society attracted the most talented and cosmopolitan of the students: Mackintosh later listed his friends there as Charles Hope, John Wilde, Malcolm Laing, Constant de Rebecque (Benjamin Constant), Adam Gillies, Lewis Grant and Thomas Addis Emmet.⁽¹⁾ He himself was admitted on 14 December 1784,

1 Memoirs, I, 26-9:
Charles Hope (Lord Granton), 1763-1851), President of the Speculative Society 1782-6, Advocate 1784, Sheriff of Orkney 1791, Lord Advocate 1801, M.P. for Edinburgh 1801, Lord Justice Clerk 1804, Lord President 1811, Lord Justice General 1836; History of the Speculative Society... from its Institution in 1764, Edinburgh 1845, 143; D.N.B.
John Wilde (?-1840) President of the Society 1783-8, Advocate 1785, author of An Address to the Friends of the People, Edinburgh 1793, Professor of Civil Law at Edinburgh 1792-1800, became incurably insane; History of the Speculative Society, 147.

and soon became a leading speaker; in his first session he was, with, among others, Benjamin Constant, appointed to the Committee responsible for drawing up questions for debate. Although the duty of giving a discourse, or opening a discussion, went by rotation, Mackintosh on occasion volunteered his services; some meetings he clearly dominated. The entry in the Minute-Book of the Speculative Society for 3 January 1786 reads:

Mr. Mackintosh in rotation delivered a Discourse on the present state of Parties in Great Britain.

The question for this evening's debate 'Are the Irish Propositions such as promise to be mutually beneficial to both countries?' was opened by Mr. Mackintosh in rotation, & spoke to by Mr. Manners, Mr. Laing, & Mr. Mackintosh.

The question being put it passed in the Negative. Ayes 2, Noes 14. Tellers for the Ayes W. Eliot, for the Noes Mr. Mackintosh.

On the whole Mackintosh preferred to speak on speculative issues; on 19 December 1786, he delivered, for a friend, William Alexander, a 'Discourse on Liberty and Necessity', and on the following week, Alexander delivered, in Mackintosh's place a 'Discourse containing a Comparative View of Mr Fox and Mr Pitt's India Bills'. It may also be noted that on 16 January 1787, a motion was proposed by John Wilde and Mackintosh 'That a sum be appropriated from the Society's Funds to be transmitted to the Committee at London for erecting a statue to Mr. Howard'; the motion evidently was not regarded favourably by other members, since a fortnight later it was withdrawn. The

(...cont.)

Malcolm Laing (1762-1818) President of the Society 1785-8, Advocate 1785, author of a History of Scotland, M.P. for Orkney and Shetland 1807-12, with Foxite sympathies; History of the Speculative Society, 153; D.N.B.

Lewis Grant (Earl of Seafield) (1767-1840) President of the Society 1788-90, Advocate 1789; M.P. for Elginshire 1790-6, succeeded as 5th Earl of Seafield 1811; History of the Speculative Society, 168.

Adam Gillies (Lord Gillies) (1760-1842) President of the Society 1789-90; Advocate 1787, Lord of Session 1811; History of the Speculative Society, 179, D.N.B.

Among other prominent members of the Speculative Society was Lord Daer (second son of the Earl of Selkirk, d. 1794), also to take an active part in radical politics in London; History of the Speculative Society, 185.

subjects for debate, of course, ranged widely, including the established institutions of Church and University, the position of the aristocracy, of women, and of the Jews, the encouragement of industry, the impressing of seamen, the question of suicide, the divine attributes and various historical and literary topics, especially the work of Ossian.

However, in spite of Mackintosh's prominence, he was elected President of the Society only on 20 March 1787.⁽¹⁾ His talent for politics and debate was evidently sharpened and stimulated in the meetings of the Speculative Society; it appears too, from the subject of debate to which he spoke, and the sides that he took, that he was one of the more radical members of the Society.⁽²⁾

Given the enthusiasm and interest prevailing in politics and society, no student could have failed to be aware of the writings of the Scottish school, of whom Adam Smith, Adam Ferguson, and Dugald Stewart were in residence at the time, together with Dr. Robertson, the historian, and Lord Kames. There is a story of Mackintosh's meeting with Ferguson:

He (Professor Cleghorn) spoke of Ferguson's having mentioned Mackintosh's having offered himself to Ferguson to succeed him in the Chair (I think it must

¹ Minutes of the Speculative Society, on microfilm, M. 1077, in Edinburgh University Library.

² For a recent estimate of the importance of student societies in the life of the university see D.B. Horn A Short History of the University of Edinburgh, 93.

have been at the time when the Professor finally withdrew). Ferguson said that Mackintosh waited upon him, addressing him in a set speech, telling him that he had lived satis ad vitam, not satis ad gloriam: and that he had shown great talent. This agrees with what I have repeatedly heard Sir James mention; but I understood, though I do not distinctly recollect, that he had written to Ferguson from Aberdeen, or immediately after coming to Edinburgh. He may however have addressed him verbally. At all events I recollect distinctly that Sir J. said that Ferguson had treated him very kindly and complimented & taken notice of him. (Dr John Thomson when I mentioned the incident, thought it impossible. I was therefore glad to have this confirmation from Dr Cleghorn, who had the facts from Ferguson. Coming thus from the two best quarters I imagine there can be no doubt of the fact). (1)

Mackintosh certainly remembered attending Ferguson's lectures at Edinburgh; (2) there was as yet no hard and fast division between Arts and Medicine, and many medical students attended arts classes. (3) Ferguson followed Mackintosh's later career with interest and respect; although there is no record of his reaction to the Vindiciae Gallicae, the Discourse on the Laws of Nature and Nations was rapturously received by him:

Do you know Mr McIntosh whose project to give Lectures on the Law of Nature and Nations has been announced in a preliminary Discourse? Have his Lectures taken place? With what success? The specimen I have seen inclines me to think he is one of the greatest moralists this Island has produced & I consider the Publick Character as involved in his success. (4)

In fact Mackintosh, he thought, might succeed where he himself had

1 Diary of William Erskine, 9 September 1836, B.M. Add. MSS 39945 f.35.

2 Memoirs, II, 243

3 Horn, *op.cit.*, 46

4 Adam Ferguson to Sir John Macpherson, 15 July 1799, D.1.77, Edinburgh University Library.

failed:

his tone, though more harmonious, is in unison with mine. He had his reasons, probably, for not mentioning me & I am not solicitous about them. He will probably procure to moral philosophy that popularity in England which I wished for but have been unable to obtain. His taking his ground in the Law is not so apt to alarm the Universities, ^{and the Church,} as if he had called his object Moral Philosophy, which those authorities sometimes mention among the corruptions of the time. (1)

And he viewed Mackintosh's emulation of Sir William Jones with some dismay:

I am not so easily reconciled to the departure of Countryman Mackintosh into the same grave. It is melancholy that we have no place in our domestic system for Moral & Political Wisdom armed with growing eloquence. (2)

The direct debt of James Mackintosh to the Scottish thinkers will be discussed in connection with his works; but it must be recognised that at Edinburgh intellectual influence was joined to personal contact. Perhaps he brought an introduction from Major Mercer, that member of the Aberdeen literati who had been a fellow-soldier of his father's; perhaps the introduction came through Alexander Fraser-Tytler, the Professor of History, to whose wife he was related, and at whose house, he remembered, he met, among others Henry Mackenzie, the 'man of feeling'. (3)

The academic successio within this school is clear; from Francis Hutcheson, through Adam Smith, Thomas Reid, Adam Ferguson, and Dugald Stewart, it is possible to distinguish a common outlook

1 Ferguson to Macpherson, 2 September 1799, J. Small, Biographical Sketch of Adam Ferguson (From the Transactions of the Royal Society of Edinburgh), Edinburgh, 1864, 66. The original letter is in D.1.77, Edinburgh University Library.

2 Ferguson to Macpherson, 10 November 1804, D.1.77, Edinburgh University Library.

3 Memoirs I, 22.

and a common purpose. They shared the same views on the importance of scientific method in dealing with the study of man in society, and the same emphasis on the firm ethical foundations of their work, foundations which were ultimately to be determined by 'moral sense' (or 'common sense' or 'benevolence' or 'intuition').⁽¹⁾ Ferguson, in this representative of his contemporaries, discussed the science of pneumatology, that is, the foundation of moral philosophy in the history of man's nature; once the facts were established a general and comprehensive moral law could be posited. This study involved, of course, surveying the life of man in society, and the use of history itself; and it meant that considerable use was made of the comparative method, especially in, for example, the examination of contemporary primitive peoples, and those at similar stages of development in the history of civilisations. The stages of human history discussed were divided by their economic function: hunting, pastoral, agricultural and commercial societies.⁽²⁾ A 'scientific' approach to Natural Religion was advocated in the effort to discover the universal elements of religion.⁽³⁾ The progress of society was seen to be spontaneous

1 Bryson Man and Society, Ch. I on the unity and coherence of the Scottish school generally.

2 This was the scheme of classification adopted by Smith and John Millar; Ferguson discusses only two rude stages of society: 'savagery' and 'barbarism'; D. Forbes (ed) Adam Ferguson An Essay on the History of Civil Society (1767), Edinburgh, 1966, xxii.

3 Cf. Mackintosh, on the Speculative Society: 'My first essay was on the religion of Ossian. I maintained, that a belief in the separate existence of heroes must always have prevailed for some time before hero-worship; that the greatest men must be long dead, believed to exist in another region, and considered as the objects of reverence before they are raised to the rank of deities; that Ossian wrote at this stage in the progress of superstition; and that if Christianity had not been so soon introduced, his *Trenmore* and *Fingal* might have grown into the Saturn and Jupiter of the Caledonians. Constant complimented me on the ingenuity of the hypothesis, but said, that he believed Macpherson to have been afraid of inventing a religion for his Ossian.' Memoirs I, 28. Constant maintained a lifelong interest in comparative religion.

and unconscious, and emerging from the conflict of different groups, parties, and interests within society. The state as an artifact was replaced by a state in which the 'law of heterogeneity of ends' left to the natural passions and instincts of man, which were in themselves to be regarded as a healthy sign of public spirit and national vigour, the fulfilment of human nature in society. Conflict stretched and tested that nature to its utmost; corruption, to Ferguson, implied not so much the dangers of luxury as the destruction of that aggression and vigour which as an integral part of man's nature could alone bring about its fullest realisation. What was attacked in commercial and technical progress was the dehumanisation and alienation of man. Ferguson's social science, was, however, intended always to be subordinate to his ethical purpose, and in the Principles of Moral and Political Science he preached the duty of active benevolence. To reconcile these themes, he resorted to man's inner conflict, to his ability to control his own actions, and to the power of habit to discipline man's energies.⁽¹⁾

The political implications of these intellectual developments can be seen most clearly in the work of John Millar of Glasgow, the disciple of Adam Smith. The 'scientific' nature of their study of history brought about, for example, an iconoclastic attitude towards the British Constitution, which may be compared to the political primitivism of the English reformers of the 1780's and their reverence for the Saxon past. For Millar, Magna Carta was the work of a few

1 Forbes (ed.) Essay on the History of Civil Society; W.C. Lehmann Adam Ferguson and the Beginnings of Modern Sociology. An analysis of the sociological elements in his writings etc., New York 1930; L. Schneider (ed.) The Scottish Moralists. On Human Nature and Society, Chicago and London 1967; D. Kettler The Social and Political Thought of Adam Ferguson, Columbus, Ohio, 1965.

petty tyrants who opposed one great tyrant; the liberties of the people were supremely irrelevant - and yet, by the 'law of heterogeneity of ends' they were unconsciously increased. Yet the Whiggism of Smith and Millar involved only the recognition of the necessity of change dictated by the changing pattern of society; they had no use for egalitarian rights, but adhered to the pattern of an ordered society. If the great families were no longer capable of resisting the erosion of their power, the educated middle classes deserved to be given their place in the Constitution. Nevertheless, by their championing of the theory of progress, albeit unconscious, they provided that organising principle of thought which was lacking in Montesquieu's comparative science; in so doing they became champions of liberal reform.⁽¹⁾

Adam Ferguson was unique among the Scottish school in being himself a Highlander; this was perhaps the reason for his recognition that societies, even primitive ones, cannot be classified purely in terms of their economic development:

Whereas Smith could see only the external bonds of the clan system, the need for common defence and association in the absence of established law and authority, the 'despotic' authority of the chief, and the economic dependence of the clansmen, Ferguson knew the inner bonds, the loyalty to the clan, and to the chief who was the symbol of its unity. (2)

Ferguson had, in fact, of all the representatives of the Scottish intellectual tradition, the greatest insight into the non-rational

1 D. Forbes 'Scientific' Whiggism; Adam Smith and John Millar' Cambridge Journal, VII, August 1954, 643-670; W.C. Lehmann John Millar of Glasgow, 1735-1801 His Life and thought, and his contribution to sociological analysis, etc., Cambridge, 1960; A. Skinner, 'Economics and History - the Scottish Enlightenment' Scottish Journal of Political Economy, 12, 1965, 1-22.

2 Forbes (ed.) Essay on the History of Civil Society xxxix.

and the primitive; the methods of the 'theoretical historian' were supplemented by the conclusions of experience. And in this context Mackintosh should be seen as similarly aware of the value of such an organic unit of society as the clan, and of the depth of the division between the world of the Highlands and of the new structure of society rapidly being brought about by commercial progress in the Lowlands and in England.

It can be shown, in fact, that for the lairds of Kellachie, their chief, Mackintosh of Mackintosh, was still a figure of importance in their lives. He acted as executor for Angus Mackintosh;⁽¹⁾ he visited the Mackintoshes of Kellachie in the course of a tour around his estates;⁽²⁾ in 1785 he summoned young James Mackintosh to 'attend him to Lochaber', on a punitive expedition against armed bands - it is said that James Mackintosh later frequently recalled his own military prowess.⁽³⁾ At the same time the heir to Kellachie was a witness of the poverty and discontent of the tenants on his own estate; the reports made by the factor of Kellachie to Bailie John Mackintosh show to what an extent many tenants were living at what seems like subsistence level. To many there seemed only one solution: Bailie John Mackintosh wrote:

I have not been able to collect one shilling of this years rent from the Miserable tenants of Kellachie, some of whom are talking of emigrating to America this year. ⁽⁴⁾

1 Will of Captain Angus Mackintosh, 13 February 1779, Fraser-Mackintosh collection.

2 (Sir Aeneas Mackintosh) Old Inverness-shire. Notes by a Highland Chief in 1784, Inverness, 1931.

3 Captain John Mackintosh to Bailie John Mackintosh, 11 August 1785, Fraser-Mackintosh 'The Mackintoshes of Kellachie', Trans. Gaelic Soc. Inverness XIX, 113

4 Bailie John Mackintosh to Mrs. Eliza Mackintosh of Kellachie, 1 April 1784, Fraser-Mackintosh collection; this was, of course, just after the great famine of the previous year.

But there was no question of eviction; the responsibility of the laird to his tenants was never defined in purely economic terms, and it was recognised that rents were assessed very favourably for the many united to the laird by ties of kinship, in spite of the owners' own difficulties. ⁽¹⁾ The ties of family are very evident throughout Mackintosh's early life, and are indeed best exemplified by the responsibility for Kellachie's affairs shouldered by Bailie John Mackintosh. One reason for the explosion of 'sociological' thinking in late eighteenth century Scotland is said to be not so much the rate of commercial and technical advance, which was, of course, even greater in England, but the only too obvious contrast between, say, the rapidly expanding Glasgow of the 1750's and 1760's, and the backwardness of the Highlands, which could again be easily compared with the still apparently feudal social structure of France, or even the primitive North American Indians. ⁽²⁾ The impact of this contrast must have come home very fully to such an aware student of society and politics as James Mackintosh; it will be seen reflected in his later work.

Mackintosh's inheritance and final disposal of his estate may be briefly dealt with here. Captain John Mackintosh died on 22 May 1788; ⁽³⁾ and his heir found that the money he himself inherited from his uncle was liable for his father's many debts. Of the £2638.16.5¹/₂ left by Captain Angus Mackintosh, a balance was left

1 Cf. the correspondence over the tenancy of Allan Mackintosh. Allan Mackintosh to Bailie (now Provost) John Mackintosh n.d., James Mackintosh to Provost John Mackintosh, 15 and 21 February 1791, Fraser-Mackintosh collection.

2 R.L. Meek 'The Scottish Contribution to Marxist Sociology' in J. Saville (ed.) Democracy and the Labour Movement London, 1954.

3 Minutes of Meeting after the Funeral of Captain John Mackintosh of Kyllochy, 28 May 1788; on 4 April Dr. James Mackintosh had appointed a Commission, consisting of Duncan Campbell (an uncle), Provost John Mackintosh, and Charles Mackintosh W.S., to manage his affairs during his absence from Scotland; Fraser-Mackintosh collection.

of £61.16.9.⁽¹⁾ Moreover, a small allowance had to be made to James' sister, Anne Mackintosh, who later married a Mr. Cochrane.⁽²⁾ James had, however, already left for London before his father's death, settling accounts as best he could in April 1788. After this he made only occasional visits to the Highlands; the confused factor of Kellachie does record that once, significantly perhaps in 1791, 'my master while in the Countree gave such strict Charges not to see his Tennants wronged' that he was in a quandary as to how to act.⁽³⁾ But under the pressure of his own ever-increasing debts, Mackintosh was driven once to suggest that perhaps the rents on the estate, of which he came into full possession in 1790, might be generally raised.⁽⁴⁾ On receiving a lengthy and magisterial rebuke from Provost John Mackintosh, he immediately retracted the suggestion.⁽⁵⁾ But from 1790 to 1792 only too frequent demands for money were made upon the Provost, who then succeeded in his attempts to give up the burden of Kellachie and its owner.⁽⁶⁾ Mackintosh then turned to borrowing large sums from the Earl of Lauderdale; by 1796 his debts amounted to £4247.10.0.⁽⁷⁾ The estate was then handed over to

1 Account of Charge and Discharge betwixt Aeneas Mackintosh Esq., of Mackintosh and Captain John Mackintosh now of Kellachy and Dr James Mackintosh Younger of Kellachy, 4 April 1788, Fraser-Mackintosh collection.

2 Minutes of Meeting *ibid*; Provost John Mackintosh to Miss Annie Mackintosh of Kyllachy, 8 November 1788, Fraser-Mackintosh collection. James Mackintosh's brother John entered the army and died in Honduras in 1800; Fraser-Mackintosh 'The Mackintoshes of Kellachie' Trans. Gaelic Soc. Inverness, XIX, 110-1.

3 James Mackintosh (factor) to Provost John Mackintosh, 16 May 1791, Fraser-Mackintosh collection.

4 James Mackintosh to Provost John Mackintosh, February 1791, loc.cit.

5 Provost John Mackintosh to James Mackintosh, 5 March 1791; James Mackintosh agreed that any threat of eviction would be 'harsh and barbarous'; James Mackintosh to Provost John Mackintosh, 28 March 1791, loc.cit.

6 James Mackintosh to Provost John Mackintosh, 5 December 1790, 15, 21, 28 February, 4 March, 26 May, 11 November, 12 December 1791, 1 March, 20 December 1792; Provost John Mackintosh to James Mackintosh 9 June 1791, loc.cit.

7 Trust Disposition of James Mackintosh to the Earl of Lauderdale, 20 February 1796, loc.cit.

trustees, who were to be responsible for the gradual payments of his debts. In 1804 it was sold for £8500 to Phineas Mackintosh of Drummond.⁽¹⁾

Mackintosh's actual connection with Scotland was therefore after 1788 tenuous and occasional; emigration for him, as for so many others, seemed the only solution, and London the immediate challenge. Later in life, however, he was to envy the way of life of the Edinburgh literati. The biographer of Benjamin Constant's youth has attempted to assess the legacy of Edinburgh:

On aperçoit assez bien une sorte de sympathie générale entre la méthode de la philosophie écossaise et l'esprit de Benjamin. L'emploi exclusif qu'elle faisait de la conscience comme moyen d'investigation psychologique convenait à la faculté d'analyse de Constant. Le libéralisme profond, instinctif et doctrinal, de l'École écossaise, qui s'étendait de la pensée à la vie des étudiants, devait s'accorder avec son individualisme. Cela est du moins infiniment probable. Il me semble pas douteux non plus que le libéralisme politique de l'Écosse ait agi sur son libéralisme encore latent ou déjà né. (2)

Mackintosh, like Constant, was to find that the peculiar mixture of science and sentiment which characterized the Scottish Enlightenment was to be evident throughout his life. Although the balance might swing from experiment to hypothesis, from revolution to tradition, and finally to the most cautious empiricism, the roots of his approach always lay in the scientific methodology, the emphasis on ethical philosophy, and the insight into the progressive evolution of man in society, learned at Aberdeen and Edinburgh in this period. In

1 Excerpt from the Partic lar Register of Saisines from the Counties of Inverness, Ross and Sutherland, relating to Persons of the name of Mackintosh, Box 62, Fraser-Mackintosh collection.

2 G. Rudler La jeunesse de Benjamin Constant, 1767-94. Le disciple du XVIII^e siècle, utilitarisme et pessimisme, Mme de Charrière, Paris, 1909, 171-2.

the political science of the Vindiciae Gallicae, in the admiration of Burke that pervades the Discourse on the Law of Nature and Nations, in Mackintosh's scientific approach to the problems of India law and society, and his sympathy with Hindu culture, and in his final adherence to liberal principles, there is at least this underlying thread of consistency.

II RA ICALISM AND THE FRENCH REVOLUTIO : THE V DICIAE GALLICAE

The Vindiciae Gallicae, published in May 1791,⁽¹⁾ as a reply to Edmund Burke's Reflections on the Revolution in France, has been praised by many, though not all, historians.⁽²⁾ It is generally seen as the work of a 'radical Whig', consistent with Mackintosh's later prominence in the Society of the Friends of the People;⁽³⁾ but this interpretation of the work is open to objections. Before 1789, even the most radical of English Whigs relied on a basically antiquarian ideology. The Real Whigs and the leaders of the Society for Constitutional Information looked to the ancient constitution of the Gothic past, which needed only to be restored to its original equilibrium.⁽⁴⁾ Although some had a wider conception of suffrage than did, for example, Christopher Wyvill, the leader of the county associations, not many could be considered democrats. The radical content of the Vindiciae sets it completely apart from this tradition;

1 James Mackintosh, Vindiciae Gallicae:- A Defence of the French Revolution and its English Admirers, against the Accusations of the Right Hon. Edmund Burke, including some Strictures on the late Production of Mons. de Calonne, London 1791.

2 W.P. Hall, British Radicalism 1791-7, New York 1891, 97-9; C.B.R. Kent The English Radicals: An historical sketch, London 1899, 110; G.P. Gooch 'Europe and the French Revolution' in The Cambridge Modern History, VIII, Cambridge 1904, 785; H.W. Meikle Scotland and the French Revolution, Glasgow 1912, 57-60; J. Dechamps Les Iles Britanniques et la révolution française, Bruxelles, 1949, 27; R.R. Fenessy Burke, Paine and the Rights of Man, The Hague, 1963, 194-9; W.L. Renwick English Literature 1789-1815, The Oxford History of English Literature IX, Oxford 1963, 21; J.T. Boulton, The Language of Politics in the Age of Wilkes and Burke, London 1963, 151-67; H. Ben-Israel English Historians on the French Revolution, Cambridge, 1968, 15. A more critical view is taken in E. Halévy The Growth of Philosophic Radicalism translated by M. Morris, London 1928, 184-5, and in A. Cobban (ed.) The Debate on the French Revolution, London 1950, 11; in G.S. Veitch, The Genesis of Parliamentary Reform, London 1913, 169, the Vindiciae is described as 'now almost unreadable'.

3 L. Stephen The English Utilitarians, 3 vols., London, 1900, II, 100; Veitch op.cit., 170.

4 C. Robbins The Eighteenth Century Commonwealthman. Studies in the transmission, development and circumstances of English liberal thought from the restoration of Charles II until the war with the thirteen colonies, Harvard 1959, 320 and passim; S. Kliger The Tories in England. A Study in seventeenth and eighteenth century thought, Harvard, 1952, Ch. 2 'Gothic Parliaments'.

it must be seen not in the light of a sterile English constitutionalism, but in relation to a more fertile Scottish inheritance.

As a prelude to the Vindiciae Gallicae, it is possible to reconstruct some of James Mackintosh's movements in the world of radical politics and journalism, between April 1788, when he came to London, and April 1791. At the beginning of 1788 he was considering going to India, admitting to his friend John Wilde that for this purpose he was attempting to exert influence depending on 'the iniquitous traffic in votes' with the member for Inverness Burghs, Sir Hector Monro, in order to obtain an appointment. But at the same time, he wrote:

The shreds and fragments of the impeachment⁽¹⁾ which have reached us in the Scotch papers, have so forcibly impressed my imagination that I cannot think of anything else.

It was Burke's oratory at the trial of Warren Hastings which had so fired Mackintosh's imagination, and led him to write, magniloquently:

That the most wise, the most virtuous & the most eloquent of men should be the first whom God thought worthy of the high distinction that an empire should be his client, that as the Advocate of propped millions he should plead the cause of the whole human race before the most enlightened nation on earth, that at the bar of the tribunal he should arraign (.) one of the most powerful & execrable despots (that?) ever insulted heaven with his crimes, is an assemblage of grand terrible & awful circumstances, that the history of the world cannot parallel nor any creation of fancy exceed. (2)

A few months later, in London, he was himself present at the impeachment proceedings. Evidently his disillusion with Burke in 1790 was bitter.

¹ The impeachment of Warren Hastings was opened on 1 February 1788, and lasted until 1795. See J. Marshall The Impeachment of Warren Hastings, Oxford, 1950.

² Mackintosh to John Wilde, Inverness 26 February 1788, J.L. Add. MSS 582 f64.

since Mackintosh's hopes of a post in India were disappointed, in June 1788 he was considering going as a physician to Russia. Dugald Stewart gave him, as before, 'nearly connected with' of my 'most intimate friends' (Alexander Fraser-Tytler), a useful recommendation, after a meeting in London.⁽¹⁾ This project was also abandoned, and, except for a few desultory attempts to obtain a position in the following year, nothing more was heard of his practising medicine. Soon after his arrival in London, Mackintosh became acquainted with Charles, Daniel, and Peter Stuart, friends of the relatives with whom he was staying, and all closely involved in the new paper world.⁽²⁾ Other early acquaintances included Felix Macarthy, the companion of Lord Moira and Sheridan, and Joseph Gerrald, the ex-pupil of Dr. Parr, and future delegate to the British Convention in Edinburgh.⁽³⁾

In the autumn of 1788, George III's illness brought with it a constitutional crisis. In this conflict arguments were at cross-purposes with any sort of party principle: Pitt led those who insisted on the right of Parliament to appoint, and, if necessary, limit, the powers of a Regent; the Prince of Wales was linked with Fox, who very rashly advanced the theory of the Prince's hereditary right to act as Regent immediately, a claim at variance with all professed Whig principles. The only ground on which Fox could stand in the

¹ Letter, I, 46.

² Letter, I, 49; in the Stuart, originally from Edinburgh, see the D. B.; L. Werkmeister Theodore Dilly, 1772-1792, Lincoln, University of Nebraska, 1963, 62ff; for the background of their careers see I. Christie 'British New Paper in the Late Georgian Age', in Myth and Reality in Late Eighteenth Century Britain, ed. Othello Parr, London, 1970.

³ Wallace, x; Macintosh to Richard Sharp, 9 December 1806, B.M. Add. MSS 52451.

following debates was to assert that his defence of the Prince's rights was inspired by the maintenance of the liberties of the people,

and that: 'the Regency was a trust on behalf of the people, for which the Prince was responsible'.⁽¹⁾ In this debate Mackintosh produced

his first political pamphlet, a short polemic: Argument concerning the Constitutional Right of Parliament to appoint a Regency.⁽²⁾

Like other Whig publicists, he took up Fox's defence, arguing that while any attempt to impair the privilege of Parliament should be resisted, too great an increase in its powers should also be regarded as an assault on liberty. He relied mainly, however, on an appeal to the historic equipoise of the three estates, seen as an appeal to 'mere right', as opposed to expediency and the search for precedents. And the standard of right, in the absence of law or established custom, could only be the 'general spirit of the Constitution', and 'the evident welfare and safety of the country'. Parliamentary nomination of the executive power could mean annihilation for the third estate, if, for example, the King's minister should be appointed Regent, and enjoy total power without responsibility. The argument went further than Fox's, but nevertheless it was an ephemeral stand on a party issue. The crisis, however, was of great importance for the future of the Whig party; for the first time a difference between Fox and Burke over the essential principles of politics had become

1 Quoted in J.W. Derry The Regency Crisis and the Whig, 1788-9, Cambridge, 1963, 85.

2 London 1788. The Argument were largely printed before publication, in The Gazette of 1 December 1788, edited, at that time, by James Perry, another emigrant, from Aberdeen, and later the editor of the Whig Morning Chronicle; see Christie 'James Perry: the Morning Chronicle 1756-1821' in Myth and Reality in late eighteenth century British Politics. Mackintosh also planned, and a verted, a work on insanity, which was never completed. Memoirs, I, 51.

publicly appear t. Previously the opportunity of the one and the idealism of the other had by chance united him. The Regency crisis was the first serious indication of the possible disintegration of the party - which the revolution was, of course, to bring about.⁽¹⁾

Radical Whig pamphleteers had been backing Burke's devotion to the hereditary principle by arguments based on the rights of the people, hazily defined, but seeming to include the 'just judgment' of their representatives; and these arguments could be consistently recapitulated in answers to the Reflections two years later.⁽²⁾

On 18 February 1789, Mackintosh married Catherine Stuart, sister to the Stuart brothers, and immediately afterwards moved into the Stuart household.⁽³⁾ It is very probable, though little evidence remains, that he was at that time closely involved in the Stuarts' various newspaper ventures.⁽⁴⁾ Peter Stuart had been, since May 1788, conducting a daily evening paper, the Star and Evening Advertiser; but from November 1788, the proprietors began to object to the paper's outspoken support for the Prince of Wales. In February 1789, the quarrel came to a head; Peter Stuart seceded from the Star, and found alternative financial backing. On 13 February 1789, the evening Star's appeared. It has been suggested that Stuart's Star, as it came to be called, was conducted by Peter and Charles Stuart,

1 Derry op.cit., 196-7.

2 See, for example, the work of George Rous, a friend of Mackintosh's: 'The same principles (i.e. the rights of the people) led me to co-operate with you (Burke) in reproaching the frantic partition of royal authority attempted in the intended Regency, because we thought the same power proportioned to the same end, were at all times equally necessary - a trust in the individual created for the benefit of the people.' Thoughts on Government, London 1790, 2.

3 Phillips Public Characters of 1806, London 1906, 22.

4 The fullest account of their activities, which is, however, not always reliable, is Erkmeister The London Daily Press, passim.

and James Macintosh, and that after Charles Stuart was arrested on 25 February, much of the editorial work fell to Mackintosh.⁽¹⁾ The new Star was very firmly committed to the support of Sheridan and the Prince of Wales; throughout February and early March it defended the pretensions of the Prince, and tried to depress the increasingly justified hopes of the King's recovery. Its 'editorials' were consistent with the politics of the Arguments.⁽²⁾ By the end of April Sheridan may have given the paper his positive backing; but nevertheless it was failing, and by June had collapsed.

During the summer and autumn of 1789, Mackintosh, with his wife, toured the Austrian Netherlands.⁽³⁾ It is known that he spent three months, probably from August to October, in Brussels, where he witnessed the revolt of the privileged orders against Joseph II of Austria, and the discontent of the people as a whole.⁽⁴⁾ On his return, he was employed by John Bell, the editor of the Oracle, for whom Peter Stuart was already working, to take charge of the foreign news.⁽⁵⁾ The Oracle was halfheartedly subsidised by the Treasury, but its politics were hardly orthodox Pittite.⁽⁶⁾ A series of articles on the 'History of the Austrian Netherlands' beginning in the Oracle of 9 November 1789, does in style, content, and timing strongly suggest Mackintosh's authorship. The writer supported

1 For a full, but often unsubstantiated description of the rise and fall of Stuart's Star, see ibid. 219-316; Charles Stuart was at this time employed both by Sheridan and the Treasury, and his arrest represented the delayed reaction of the government to this piece of double-dealing.

2 Though they were not 'almost verbatim transcripts', as claimed by Werkmeister, op.cit., 255.

3 Phillips Public Characters of 1806, 220-1.

4 On a later visit Mackintosh recalled an eventful stay there. Entry in MSS/Journal, 15 September 1824, B.M.Add. MSS 52446; see also the reference in the Vindiciae Gallicae to an incident in Brussels, witnessed by Mackintosh in September 1789. Works, III, 27.

5 Memoirs, I, 53; Werkmeister op.cit., 323

6 Ibid., 330.

the politics of the Patriotic party in the Netherlands, who believed that the resistance of the privileged orders to Joseph's reforms might be temporarily supported, even though such privileged estates were rationally indefensible; and the author of the article recalled a meeting with one of the leaders of the Patriots, Van der Noot, by whom this point was forcibly made.⁽¹⁾ The estates of the revolting provinces had given their insurrection legal and constitutional sanction, by declaring, in the name of the people, that the Emperor had violated his compact with the people, and that therefore his subjects were absolved of their duties and restored to the free exercise of their rights. Mackintosh continued to report news from abroad, and of course, especially from France, during the following year. He also contributed articles, including a character of Mirabeau, to the Morning Chronicle.⁽²⁾

By 1790, then, he was clearly associated with the political following of Sheridan, himself a key figure in the organisation of the Whig party that was at this time being built up by William Adam.⁽³⁾ At the same time, Mackintosh had observed, at first hand, and as a journalist, the democratic uprisings of Europe. However, his movements among radical groups in London are not very clear. His biographer asserts that at a meeting of the Society for Constitutional Information,

1 The Oracle, 16 December 1789.

2 Memoirs, I, 54n; these articles have not been found in surviving issues of the Morning Chronicle for 1789, and very few issues for 1790 still exist.

3 See, on this, D. Ginter (ed.) Whig Organization in the General Election of 1790. Selections from the Blair Addams papers. Berkeley and Los Angeles, 1967. Introduction, xi-lvii; idem 'The Financing of the Whig Party Organization, 1783-93', American Historical Review, LXVI, 1965-6, 421-440.

very shortly after Macintosh's arrival in London :

Mr. (Richard) Sharp was much struck with the talent exhibited by a young man, who was acting in the absence of the regular secretary, although only himself just admitted into the Society. (1)

But Mackintosh's name appears only once in the minutes of the Society, on 19 February 1790, when Sharp, Thomas Cooper, Brand Hollis, and Horne Tooke were among those present.⁽²⁾ However, the Society, although meeting fairly regularly once a week at this time, in May 1790 adjourned, and did not resume its full activities again until February 1791. Mackintosh campaigned for Horne Tooke in the Westminster election of June 1790.⁽³⁾ According to one authority, he also, encouraged by his brothers-in-law, spoke at public meetings in Middlesex.⁽⁴⁾ He renewed his friendship with Thomas Addis Emmet, the future leader of the United Irishmen, at that time reading for the Bar in Lincoln's Inn, to which Macintosh had himself been admitted on 8 April 1790.⁽⁵⁾ Yet it is clear that Mackintosh himself was in no way prominent in radical circles until the publication of the Vindiciae Gellicae.

Macintosh was by no means the first to reply to Burke; the Reflection was first published in November 1790, and answers from Mary Wollstonecraft, George Rous, and Capel Lofft soon appeared. In February 1791, Part I of The Rights of Man followed.⁽⁶⁾ The Vindiciae Gellicae made its first appearance on 7 May 1791; it was immediately

1 Memoirs, I, 4.

2 Minutes of the Society for Constitutional Information, P.R.O. T.S. 11/961.

3 Memoirs, I, 52.

4 Wallace. That in life he once referred to himself as an 'experienced demagogue'; Macintosh to General John Malcolm, 17 May 1858. J.V. Kaye The Life Chronicle of Major-General Sir John Malcolm, 2 vols, London 1856, I, 441, dated originally in India Office Records, H.M.S. 736, ff. 135-146.

5 C.G. Hines Memoirs of Thomas Addis Emmet, New York, 1829, 35; The Records of the Honorable Society of Lincoln's Inn, The Black Books, edited by J.P. Baildon, with prefaces by James Douglas Walker, 4 vols., London 1897, 1902, I, 535.

6 For a bibliography of the debate, see Coulton Language of Politics in the Age of Wilkes and Burke, 65-71.

welcomed as a factual, documented, and, at the same time, analytical defence of the revolution. It was in the spirit of that year no drawback that the principles on which the work was based seemed to be as radical as those of Paine. In style, however, Mackintosh abandoned the different rhetorical techniques of both Burke and Paine. Naturally he himself attacked Burke's flights of eloquence:

the language is such as might have been expected towards a country which his fancy has peopled only with plots, assassinations, and massacres, and all the brood of dire chimeras which are the offspring of a prolific imagination, goaded by an ardent and deluded sensibility...To the English friends of French freedom his language is contemptuous^{liberal} and scurrilous. (1)

A controlled analysis, and method in argument, would, Mackintosh claimed, dispose logically of the assertions of the Reflections. Mackintosh's own prose style has been admirably analysed in relation to its subject, and characterised as possessing an intellectual discipline, which was:

a source of great strength - of incisive irony, admirable terseness and sustained argumentative writing of excellent quality. (2)

But his restraint seemed to prevent spontaneity in writing; much of the imagery is wooden and lifeless, or bombastic, and he certainly lacked the passion and intensity of other writers, and the universal appeal of Paine. Yet as a critic of Burke, and a controversialist, his style was admirably suited to its purpose. (3)

¹ Works, III, 5.

² Boulton op.cit., 162, and see his general discussion of the Vindiciae, 152-67.

³ But see the interesting suggestion by Wilbur S. Howell, in his review of Boulton's book, William and Mary Quarterly, 3rd series, XXII, 1965, 522, that the Vindiciae Gallicae owed much to the 'new style and idiom' set out in George Campbell's The Philosophy of Rhetoric, a turning away from 'the grand style in political communication'. The connection is a possible one; but there is a world of difference between the rhetoric of Paine and of Mackintosh.

It has been said that 'the confutation of Burke on the French Revolution is now a one-finger exercise in politics and history'.⁽¹⁾ Mackintosh was one of the first to demolish Burke's inaccurate view of French society and its institutions; simultaneously he launched an onslaught on the 'manifesto of a counter-revolution', Calonne's De l'état de la France.⁽²⁾ The aristocratic counter-revolution already had its leader in the Comte d'Artois; and Edmund Burke had written a fundamentally counter-revolutionary defence of hierarchical society, led by a privileged aristocracy. For Burke translated French society into the terms he understood; the ancient constitution of France could be redesigned to fit the British model of oligarchic government. The insularity of the Reflections is clearly indicated in the Vindiciae Gallicae; the props of Burke's case are easily undermined. Burke had failed to understand the basic differences between the social structure of England and of France. The nobility of France and the gentry of England were not comparable:

In England they are a small body, united to the mass by innumerable points of contact, receiving from it perpetually new infusions,^{and} returning to it undistinguished and unprivileged, the majority of their children. In France they formed an immense case, insulated by every barrier that prejudice or policy could raise. (3)

The difference was that between a senate, and a whole privileged caste. And, similarly Mackintosh made it clear that the Parlements

1 R. Williams Culture and Society 1780-1950, Penguin edition, 1966, 24.

2 C.A. de Calonne De l'état de la France, présent et à venir, London, 1790.

3 Works, III, 116.

were self-interested, self-perpetuating and venal bodies, which might have served some purpose in the events leading up to the revolution, but were in no way friendly to reform of any kind. It was Burke's misrepresentation of the social structure of France which had again led him to unjustifiable strictures on the composition of the National Assembly. The third estate was, naturally, composed of 'lawyers, physicians, merchants, men of letters, tradesmen, and farmers', since the landed gentry were a part of the aristocracy. The predominance of lawyers was to be explained by the prestige and influence of the twelve or so provincial Parlements, whose members were comparable in status to those of the Irish or Scottish Bars, and of whose existence Burke, in his references to 'country attornies' seemed to be unaware. Equally Burke's contempt for the 'country curates', and for the liberal noblemen who had joined the National Assembly, could not be substantiated; among those nobles were men of the greatest wealth and rank.⁽¹⁾

Burke had similarly misunderstood the regionalism of France under the ancien régime; his accusations that the National Assembly had brought about the disintegration of France by dividing it into departments totally distorted the true picture. Again, this distortion sprang from too close an approximation between French and English government and society.⁽²⁾

Mackintosh was also determined to point out Burke's inability even to define his subject; Burke had failed to pinpoint any crucial moment at which it could be said that a revolution in the political world had occurred. What had actually constituted the decisive

1 Ibid. III, 62-5.

2 Ibid, III, 108-9.

break with the old government of France, among the many events of the summer of 1789? The ambiguity was unresolved throughout the Reflections; the storming of the Bastille and the popular rising in Paris, the summoning of the States-General, the union of the three orders, or the drawing up of a new constitution for France, could each be said to be revolutionary in its implications.⁽¹⁾ The ambiguity was in effect a result of Burke's explanation of the Revolution as a conspiracy among individuals and interests to subvert the established order, a series of events engineered and inspired by 'a cabal of philosophic atheists' and 'a monied interest'. Such a thesis was, in Mackintosh's view, impossible to relate to the movement of opinion that for him constituted the Revolution. Yet he could extract some truth from Burke's theme. He firmly believed that:

the commercial or monied interest has in all nations of Europe...been less prejudiced, more liberal, and more intelligent than the landed gentry. Their views are enlarged by a wider intercourse with mankind; and hence the important influence of commerce in liberalizing the modern world. (2)

Unpalatably, but justifiably, he also pointed out the historic association in England between the moneyed interest and the Whig beneficiaries of 1688 - those Whigs who were assailed by the Tory party in the defence of the land and the Church. And though Mackintosh accepted that the philosophers had prepared the way for revolution, he saw their work as directed entirely towards political ends; in spite of their own speculations, they recognised the need felt by man for religious faith. They had attacked not religion itself, but the political role of the Church; yet the truly 'philosophic infidel', David

¹ Ibid, III, 9-10.

² Ibid, III, 66.

Hume, had seen the preservation of an opulent and established Church as the best way of maintaining moderation and restraining enthusiasm in religion. Persecution, on the other hand, would breed fanaticism; and this had never been in the minds of the philosophers, who had hoped only that religious liberty would restrain extremism.⁽¹⁾

But the answer that Mackintosh gave to Burke was not simply a well-informed critique of the Reflections, an exercise in annotating and deflating excess and prejudice; though his capacity for this is evident throughout the Vindiciae, and has been only briefly illustrated here. If Burke saw the Revolution in France with the eyes of an elderly Rockinghamite Whig, Mackintosh saw it within the conceptual framework of the Scottish radical. And it is this framework which gave the Vindiciae, in the terms of the English debate, its originality, and which deserves to be further explored. The difference between English and Scottish political thinking here may be traced in terms of the 'commonwealth' tradition. The 'classical republicans' of the late seventeenth century - Harrington, Sidney, Neville - left a significant legacy to eighteenth century political ideologies. Their contribution was as great, if not greater, than that of John Locke.⁽²⁾ And one of the most fruitful inspirations was that passed to Scotland; Caroline Robbins has traced the genealogy of 'commonwealth'

1 Ibid, III, 66-9

2 See Z.S. Fink The Classical Republicans. An Essay in the Recovery of a Pattern of Thought in Seventeenth Century England Evanston, Illinois, 1962; J.G.A. Pocock 'Machiavelli, Harrington, and English Political Ideologies in the Eighteenth Century', William and Mary Quarterly, 3rd series, XXII, 1965, 549-83; idem 'The Onely Politician': Machiavelli, Harrington, and Felix Raab', Historical Studies, Australia and New Zealand, XII, 1965-7, 265-96; J. Dunn 'The politics of Locke in England and America in the eighteenth century', in John Locke. Problems and Perspectives. A collection of new essays, edited by J.W. Yolton, Cambridge, 1969.

thinking from Andrew Fletcher and the rediscovery of the sixteenth century writer, George Buchanan, to Francis Hutcheson, Adam Ferguson, Robert Wallace, William Ogilvie, and John Millar.⁽¹⁾ J.G.A. Pocock has recently discussed the changes that took place in the Harringtonian classical tradition, from about the 1670's, shaping later political discussion. Harrington's agrarian republic of freeholders was gradually transformed into the ancient and balanced constitution of the Gothic past, and in these terms remained at the heart of eighteenth century debate.⁽²⁾ In Scotland, the Harringtonian tradition was less distorted; it remained closer to the original classical sources of inspiration, and it continued to be fundamentally interested in the economic and social basis of political power. Both these elements of the republican tradition are worth examining briefly.

For Andrew Fletcher of Saltoun, the Gothic monarchies of Europe had been irretrievably destroyed; he listed the causes: the revival of learning, the invention of printing, of the compass, and of gunpowder. All these were accompanied by a slow rise in commercial prosperity, and by the increasing role played by money in government. Pocock has characterised Fletcher's approach:

Fletcher really is talking about the rise of the modern state and the effect of money upon society; but he is not doing so out of a bourgeois consciousness, or out of an increasing awareness of the 'market' or 'entrepreneurial' element in social relationships. What moves him is an increasing - and hostile - awareness of the importance of money in government: of public finance, of the professionalization of army and bureaucracy, of the inducements which a well-financed court bureaucracy can offer the subject to co-operate. (3)

1 Caroline Robbins *The Eighteenth Century Commonwealthman*, 177-220, and in 'When it is that Colonies may turn independent': an analysis of the environment and politics of Francis Hutcheson (1694-1746)' *William and Mary Quarterly*, 3rd Series, XI, 1954, 214-51.

2 See the two articles by Pocock cited above.

3 Pocock 'Machiavelli, Harrington, and English Political Ideologies in the Eighteenth Century' *William and Mary Quarterly*, XXII, 577.

And this became both a commonplace of political debate, and a key basis for historical and political writing. Scottish thinkers from the mid-eighteenth century were, as has been suggested, concerned with the development of a 'science of society'; but their political proposals were also interesting. Francis Hutcheson's political analyses followed classical lines; his models were Aristotle, Polybius, and Harrington. Yet in his discussion of the economic foundations of power, he recognised the real benefits of increased consumption, not to be automatically condemned as luxury - and yet the wealth of the few had to be limited in the interests of the many. On this, Robbins suggests, Hutcheson is surprisingly radical. The general good of the nation could not tolerate the privileges of a few, whether in government or in society. Hutcheson's answers to political corruption included wide reform of the representative system, and the classical constitutional laws of Oceana.⁽¹⁾ Similarly, John Millar, in his historical writings, showed very clearly the influence of Harrington and the republican tradition; he too was a supporter of contemporary reform movements, and his teaching and writing stimulated radical politics.⁽²⁾

For Adam Ferguson, the Roman Republic was 'the historical embodiment of all the promise he saw in society', against the standard of which both republics and despotisms were to be judged.⁽³⁾ The model most constantly referred to in Scottish political thinking was that of the classical state, the early republic, undistorted, in general, by the

1 Robbins Eighteenth Century Commonwealthman, 190-5.

2 Ibid, 215-8

3 D. Kettler The Social and Political Thought of Adam Ferguson, 201.

notion of the ancient constitution. Where the 'classical republicans' of the seventeenth century had looked also to contemporary European republics for their inspiration, eighteenth century writers found these a less admirable source; though Venice, Switzerland, Holland, and the Italian republics were still referred to in political debate. But it was less the machinery of republican government than the ethical implications of such a state that now stood out; Venturi has recently indicated the way in which, as republicanism lost its ideological hold on Europe, a republican morale survived, transmitted, among others, by Lord Shaftesbury.⁽¹⁾ Virtue and patriotism, equality and duty, were the principles on which the republic rested. Corruption was a moral disorder in the state, a pathological phenomenon. Correspondingly, it may be suggested that in the Scottish writers of the eighteenth century, and in particular in Adam Ferguson, there is a similar inheritance. The political writings of the Scottish Enlightenment are based upon its ethical philosophy. The ideal of citizenship is to be fostered; the national character must above all be recreated and regenerated, to the heights of Machiavellian virtu. Though Ferguson's subtle analysis of the progress of civil society did not have radical implications, his view of republican morality, like that of Montesquieu, proclaimed an apparently unattainable ideal.⁽²⁾ In James Mackintosh's Vindiciae Gallicae, it is possible to see how a radical view of the French Revolution is framed in republican terms, derived from a long tradition of political thinking.

1 F. Venturi Utopia and Reform in the Enlightenment, Cambridge, 1971, 70-3.

2 D. Forbes Introduction to Adam Ferguson Essay on the History of Civil Society, especially xxv-xxviii.

To Macintosh the French Revolution was:

the effect of general causes operating on the people. It was the revolt of a nation enlightened from a common source. Hence it has derived its peculiar character; and hence the merits of the most conspicuous individuals have had little influence on its progress. (1)

Such enlightenment swept away the barriers of illusion and superstition; it brought the revival of 'the science of the rights of man', lost since the classical ages. Mackintosh's own brief history of the enlightenment in Europe makes it very clear that for him its genealogy is closely related to the Scottish republican tradition;

The first man of that period who united elegant learning to original and masculine thought was Buchanan; and he too seems to have been the first scholar who caught from the ancients the ~~humble~~ ^{holy} flame of republican enthusiasm. This praise is merited by his neglected, though incomparable tract, *De Jure Regni*, in which the ~~main~~ ^{principles} of popular politics, ~~and the nature of a free government~~, are delivered with a precision, and enforced with an energy which no former age had equalled, and no succeeding one had surpassed. (2)

After Buchanan, 'the subsequent progress of the human mind was slow'. But the profundity of Harrington's thought was echoed by that of Milton and Sidney. Locke was to be credited less with originality than with the lucid and systematic discussion of the

1 Works, III, 62.

2 Ibid, III, 137; compare with this the comment of a man whom Robbins has placed firmly at the end of the Scottish tradition: David Erskine, 11th Earl of Buchan. 'Buchanan arose in Scotland like the morning star, to announce the approach of philosophical day. He was the father of whiggery as a system in Britain, if not in Europe; the Lord Bacon or Newton of political science and sentiment...' Earl of Buchan *Essays on the Lives and Writings of Fletcher of Saltoun and the Poet Thomson* Biographical, Critical and Historical, London 1792, xxi; on Buchan, see Robbins *Eighteenth Century Commonwealthman*, 219-20; J. Clive 'The Earl of Buchan's Kick: A Footnote to the History of the Edinburgh Review', *Harvard Library Bulletin*, V, 1951, 362-70; *Fraser's Magazine*, XV, 1837, 355-61. It is suggested by one source that Mackintosh was asked to collaborate in writing a life of Fletcher of Saltoun by the Earl of Buchan. *Public Characters of 1806*, 216. Buchan gathered round him in Edinburgh in the 1780's a group of proteges, and it is not unlikely that Mackintosh was among these. Buchan's name stood at the head of non-resident members of the Society of the Friends of the People in 1792; and though his radicalism declined after that year, it is known that he was in correspondence with Daniel Stuart in 1794. *Fraser's Magazine*, XV, 355-61.

doctrines of civil and religious liberty. The Irish writer Molyneux, and Andrew Fletcher had equally defended their causes 'with the force of ancient eloquence, and the dignity of ancient virtue', and in so doing contributed to the spread of enlightened thinking. But it was the revolution of 1688 which inspired Europe; and this was a revolution, according to Mackintosh, of greater significance for its impact on the progress of opinion, than for the British constitution:

Hence England became the preceptress of the world in philosophy and freedom: hence arose the school of sages who unshackled and emancipated the human mind; from among whom issued the Lockes, the Rousseaus, the Turgots and the Franks, the immortal band of preceptors and benefactors of mankind. They silently operated a great moral revolution, which was in due time to ameliorate the social order. (1)

And those principles of 1688, which accelerated the spread of the enlightenment throughout Europe, indirectly led to the American Revolution - and from there to the revolution in France itself.

Mackintosh saw not only the intellectual revolution, but the political and social structure of France similarly in terms of the republican tradition. The Gothic system of government had, throughout Europe, had its roots in an early period of history, and in France and England its origins in the Champ-de-Mars and the Witenagemote.⁽²⁾ According to Real Whig theory, the so-called Gothic constitution was built upon representative institutions, divided into orders, maintaining by checks and balances a harmonious non-party and non-sovereign government.⁽³⁾ In the Vindiciae Gallicae, however, there is no exaggerated praise of such idealised medieval commonwealths;

1 Works, III, 146.

2 Ibid, III, 11.

3 Robbins Eighteenth Century Commonwealth, 383.

the middle ages were merely barbarous and turbulent. But their manners were to some extent moderated by a system of chivalry which prepared society for a gentler age, in which commerce, and enlightened ideas refined society. Such a transformation would inevitably follow; once the economic order of a society was gone, its political institutions decayed.⁽¹⁾

In France, events followed a different course. There, where an aristocracy was in decline, and a powerful commercial class had not yet arisen, power devolved upon the Crown; and the ancient constitution, as represented in the powers of the States-General, faded away. Under Louis XIV, military success and 'the rage of conquest' infected a nation with the spirit of despotism; France ran continually deeper into debt in order to finance the wars and the expenditure of her monarch. And throughout the eighteenth century successive ministers failed to halt the progressive degeneration of a nation; even Turgot's brief and celebrated period in power had been frustrated by Court cliques. Calonne's solution to the problems of a bankrupt monarchy was little more than a Court expedient. The Assembly of Notables was merely 'a popular Privy Council', entirely dependent on despotic authority. Calonne had aimed to destroy privilege not as a means to freedom and quality, but because it stood as an obstacle to despotic power; yet even the Notables, whom he had himself summoned, were able to expose his plans. This resistance, and that of the Parlements, privileged though it was, inspired that of the

¹ Works, III, 91.

provincial Estates, some of which displayed 'enlightened and disinterested patriotism' in uniting their Orders into a single assembly and calling for a States-General.⁽¹⁾ Everywhere the 'progress of the public mind' became more apparent; the cahiers revealed the strength of the spirit of freedom:

No sooner had the convocation of the States-General been announced, than the batteries of the press were opened. Pamphlet succeeded pamphlet, surpassing each other in boldness and elevation; and the advance of Paris to light and freedom was greater in three months than it had been in almost as many centuries. Doctrines were universally received in May, which in January would have been deemed treasonable, and which in March had been derided as the visions of a few deluded fanatics. (2)

The history of the revolution was the history of France's slow awakening, of her slow acceptance of enlightened ideas; as, for Mackintosh himself, history was essentially the record of man's unfolding intelligence.⁽³⁾ In describing the debates of the States-General, therefore, Mackintosh's aim was not to narrate, but to 'seize their spirit', and its significance for the political revolution. The action of the Third Estate, in constituting itself the National Assembly, was taken at the very moment when the folly of the Court, and popular opinion, called for it. The military design of the leaders of the Court, the royalists and the Princes of the Blood, led by d'Artois, had become more and more threatening. Louis XVI, in the Vindiciae Gallicae, is merely a vacillating instrument of his ministers, a monarch who, when alarmed by the activity of the Assembly, relied on his most despotic and unyielding advisers. And this

1 Ibid, III, 14-18

2 Ibid, III, 20.

3 As it was for Dugald Stewart, as a basis for 'theoretical, or conjectural history'. Bryson Man and Society, 88-92.

Court, in the Royal Session of 23 June, betrayed the 'gloomy and ferocious haughtiness of despotism'; the 'Royal Puppet' spoke as a sultan to his slaves.⁽¹⁾ The conflict was absolute and two-dimensional; the forces of freedom were at war with the despotic spirit. The problem which the National Assembly faced was whether any fragments of freedom could be found in the old constitution of France, or whether, as a National Convention, it should reconstruct a government on enlightened principles. There could be no doubt of its authority to do so:

Accurate forms in the conveyance of power are prescribed by the wisdom of law, 'n the regular administration of states: but great revolutions are too immense for technical formality. All the sanction that can be hoped for in such events, is the voice of the people, however informally and irregularly expressed. (2)

The informality of their action could be compared to that taken in England in 1688, when the people legitimized the deeds of their representatives retrospectively.⁽³⁾ In 1789, when the people of Paris rose, and the army defected from the monarch, the National Assembly became a Convention. Moreover, Mackintosh was not concerned simply to excuse the excesses of the popular movement; the taking of the Bastille was an act of outstanding, of classic heroism:

It will correspond to the splendour of an insurrection, as much ennobled by heroism as it was justified by necessity, in which the citizens of Paris, - the unwarlike inhabitants of a voluptuous capital, - listening to no voice but that of the danger which menaced their representatives, their families, and their country, and animated, instead of awed, by the host of disciplined mercenaries which invested them on every side, attacked with a gallantry and success

1 Works, III, 25.

2 Ibid, III, 31.

3 Ibid, III, 32.

equally incredible, a fortress formidable from its strength, and tremendous from its destination, and changed the destiny of France...It was a case in which revolt was the dictate of virtue, and the path of duty; and in which submission would have been the most dastardly baseness and the foulest crime. (1)

There were, of course less heroic risings; but those who heard the propaganda of the émigrés should consider the long history of 'silent, grinding oppressions' suffered by the peasantry.

Not only Court government, but French society itself was tainted by service to a despotic ruler; no elements of a freer constitution remained:

all the bodies and institutions of the kingdom participated in the spirit of the ancient government, and in that view were incapable of alliance with a free constitution. They were tainted by the despotism of which they had been either members or instruments. Absolute governments, like every other consistent and permanent government, assimilate everything with which they are connected to their own genius. (2)

Nobility, Church and judiciary, were incorrigibly corrupt; no longer did they retain any vestige of their role in the Gothic constitution.

The nobility had been seduced by the power, wealth, and privileges which the Crown could bestow, and become 'a band of political Janissaries'. (3)

Whether in the army, or at Court, the service of the Crown was no longer a matter of honour, but of dependence and reward. Arguments from past service, defending the existence of, for example, the Parlements, could not justify their preservation:

1 Ibid, III, 83-4.

2 Ibid, III, 35.

3 Ibid, III, 37. The phrase is a quotation from Rous Thoughts on Government, 9; this work takes a similar view of the progressive degeneration of the French monarchy, but the political remedies discussed are still those of the English Commonwealthman.

their spirit and claims were equally incompatible with liberty. They had imbibed a spirit congenial to the authority under which they had acted, and suitable to the arbitrary genius of the laws which they had dispensed... (1)

The Church had had, in effect, a despotic role of some kind at almost every period in its history: as a universal power, as the inspiration of religious conflict, and, finally, as the arm of the temporal and arbitrary power. In an enlightened age, only such a power could protect the Church from the arguments of its enemies. Anti-clericalism is a very prominent feature of the Vindiciae Gallicae; and Mackintosh makes no concessions at all to the principle of an established Church. No reforming measures could have touched these institutions; as Mackintosh put it, 'power vegetates with more vigour after these gentle prunings'. In a period of tranquillity, vested interests would always be strong enough to resist any real curtailment of their power. The 'shock of a revolution' was needed, an injection of the spirit of freedom:

It is hence that the most enlightened politicians have recognised the necessity of frequently recalling their first principles - a truth equally suggested to the penetrating intellect of Machiavel, by his experience of the Florentine democracy, and by his research into the history of ancient commonwe lths. Whatever is good ought to be pursued at the moment it is attainable. (2)

Any revolution in government had also to correspond with 'a revolution of character'; it was the task of the legislators to reform the character and morals of a people. The '*esprit générale*' of the regenerated nation would be the virtuous and rational patriotism of the free commonwealth, republic, or monarchy, a new

1 ibid, III, 50.

2 ibid, III, 52.

'virtù'; only the Greek republics had previously succeeded in creating through legislation an enlightened and independent citizenship.⁽¹⁾

In this context, we may consider Mackintosh's justification of the abolition of hereditary titles:

To give stability to a popular government, a democratic character must be formed, and democratic sentiments inspired. The sentiment of equality which titular distinctions have, perhaps, more than any other cause, extinguished in Europe, and without which democratic forms are impotent and shortlived, was to be revived; and a free government was to be established, by carrying the spirit of equality and freedom into the feelings, the manners, and the most familiar intercourse of men. The badges of inequality, which were perpetually inspiring sentiments adverse to the spirit of the government, were therefore destroyed, as distinctions which only served to unfit the nobility for obedience and the people for freedom, - to keep alive the discontent of the one and to perpetuate the servility of the other, - to deprive the one of the moderation that sinks them into citizens, and to rob the other of the spirit that exalts them into free men. (2)

The untitled nobility of the 'ancient commonwealths' had served a political function but hereditary titles, without carrying responsibilities that alone could justify them, would deform the state. Mackintosh recognised the force of Montesquieu's argument that the distinctions of nobility were the 'moral treasure' of the state, by which virtue and public service were to be rewarded; yet he believed that the force of such rewards was eroded if they were made hereditary. The state should retain personal distinctions among its citizens only as 'incentives and rewards of virtue'.⁽³⁾

Similarly, the standing professional army was attacked as 'not only hostile to freedom but incompatible with it':

1 Ibid, III, 161.

2 Ibid, III, 39-40.

3 Ibid, III, 40.

A body possessed of the whole force of a state, and systematically divested of every civic sentiment, is a monster that no rational polity can tolerate; and every circumstance clearly shows it to be the object of French legislation to destroy it...This is wisely and gradually to be effected: two gr nd operations conduct to it, - arming the people, and unsoldiering the army. (1)

The size of the standing army had brought with its own destruction; in 1789 the army had felt its loyalty to be rather to the people than to the monarch, and French soldiers became citizens. The solution that Mackintosh advocates is the old one of the 'classical republican' and of the comm nwealthman: the citizen-militia. The standing army, which could only be the instrument of military power, had to disappear, and in its place the nation was to be armed, transformed into a popular military democracy. Military service was to be the duty of all; and if a separate body of soldiers was necessary, it could be formed, as in the classical republics, by rotation, as a necessary qualification for further civil advancement.⁽²⁾ Advocacy of a citizen-militia was, of course, common in the late eighteenth century; Adam Ferguson's emphasis on the need of the independent citizen to bear arms in his own defence to some extent echoed the Scottish agitation for a militia in the mid-eighteenth century.⁽³⁾ But Mackintosh cites also on this point Rousseau's Considérations sur le Gouvernement de Pologne, in which the militia is equally at the heart of the legislative design for the regeneration of a people.⁽⁴⁾ Here one strand of the republican tradition is clearly fortified

1 Ibid, III, 127.

2 Ibid, III, 127-8.

3 See, e.g. D. Kettler The Social and Political Thought of Adam Ferguson, 56.

4 Works, III, 128.

by another. The virtuous patriotism of the citizen-soldier could, for Mackintosh also, be followed, possibly by the revival of an ancient nation, hastened by external opposition and invasion; here Mackintosh is thinking not of Poland, but of the apparently decayed nationalism of the Scots, which had once united Magnates and Commons against England.⁽¹⁾

The Vindiciae Gallicae was, then, conceived in the commonwealth tradition, one which was fortified rather than undermined by Mackintosh's reading of contemporary writers. The radical political arguments that emerged from the Vindiciae were fully in accordance with this ethical republicanism. The prospect was of a new race of enlightened legislators:

The Commonwealths which in the sixth and seventh centuries before the Christian era were erected on the ruins of the heroic monarchies of Greece, are perhaps the only genuine example of governments truly legislative recorded in history. (2)

The immense inequality of knowledge between rulers and ruled was comparable to that existing between the early tribes of Greece and their Asiatic colonists; and the present time was one strangely resembling that age.⁽³⁾ But modern philosophers had, in addition, that 'engine wherewith to move the moral world' - the press, which could diffuse knowledge into the lives of the poorest members of the community, and make the contrast between the country's old and defective institutions, and the promise of the new ideas, only too clear. Such a movement, bringing with it, the 'virtuous enthusiasm

1 Ibid, III, 159n.

2 Ibid, III, 161.

3 Ibid, III, 162.

of liberty', had to be sustained by radical action. And the construction of a new political system could be regarded as a great experiment, to determine how far governments could control the happiness of its subjects. The attempt was to be made to pursue perfection in government:

A government of art, the work of legislative intellect, reared on the immutable basis of natural right and general happiness, which should combine the excellences, and exclude the defects of the various constitutions which chance has scattered over the world, instead of being precluded by the perfection of any of those forms, was loudly demanded by the injustice and absurdity of them all. (1)

Mackintosh had, then, to justify and examine the basis on which the National Assembly legislated for the nation. Elie Halévy saw the Vindiciae as wavering in unstable equilibrium between the first principles of utilitarianism, and a priori assertion of man's natural rights.⁽²⁾ In fact, the work was a conventional application of the 'Newtonian' formula for political science; neither utility, nor natural rights, were emphasized so strongly as a scientific approach to, and the experimental character of, the laws of politics and human nature. Certainty in formulating such laws could, of course, never be achieved, but, relative to the overall progress of man, a very fair approximation to the laws appropriate to the stage of development reached could be achieved. And in France such an approximation was to be found:

The National Assembly were therefore not called on to make discoveries; it was sufficient if they were not uninfluenced by the opinions, nor exempt from the spirit of their age. They were fortunate, enough, to live in a period when it was only necessary to affix the stamp of laws to what had been prepared by the research of philosophy. (3)

1 Ibid, III, 56.

2 Halévy Growth of Philosophic Radicalism, 185.

3 Works, III, 57.

But all accusations that the reformers of France had rejected the guidance of experience for theory and speculation were totally unfounded. On the contrary, the principles on which the National Assembly worked were based entirely on empirical induction from experience and from the examples of history. Experience could provide either 'models' or 'principles' to follow; to follow the 'models' of the past was to reject all innovations. But a mechanic, examining a machine, will find in it principles which will show him how to improve it; similarly by comparison and generalization, man was able to progress. The task of the legislator was a similar one:

the rights and the nature of man are to the legislator what the general properties of matter are to the mechanic, - the first guide, - because they are founded on the widest experience. (1)

The passions and interests of man had to be calculated and manipulated in the same way as mechanical and dynamic forces in mathematics and geometry. (2) The legislator had a wide range of experience on which to draw:

experience is the basis of all:- not the puny and trammelled experience of a statesman by trade, who trembles at any change in the tricks which he has been taught, or the routine in which he has been accustomed to move; but an experience liberal and enlightened, which hears the testimony of ages and nations, and collects from it the general principles which regulate the mechanism of society. (3)

1 Ibid, III, 55.

2 For the orthodoxy of this vocabulary, see e.g. Bryson Man and Society, 18-23; and for a similar combination of ethical and mechanist thinking, G. MacKenzie 'Lord Kames and the Mechanist Tradition', University of California Publications in English, XIV, 1943, 93-121; for similar patterns among the English Real Whigs see I. Krammick Bolingbroke and his Circle. The Politics of Nostalgia in the age of Walpole, Harvard, 1968, 255.

3 Works, III, 55.

The problem posed was that faced by all 'philosophes': the reconciliation of the determinism apparently present in laws that created obligation from 'the necessary relations of things', with some notion of freedom. Mackintosh's optimism over the possibilities of human improvement seemed to have left the criterion for the laws of a rational and virtuous society undecided - with what tools was philosophy to work? The laws of politics formed merely a part of a greater system of morals, progressively discovered by experiment and induction; and ultimately, in the political world as in all others, expediency had to provide a justification. Utility alone could create obligation. The implications of this, however, caused Mackintosh some anxiety, since:

it would be fatal to the existence of morality, if the utility of every particular act were to be the subject of deliberation in the mind of every moral agent. (1)

Scepticism was still the enemy, even for a believer in the progressive character of knowledge. The few basic principles of right which had in the end to be observed were self-evident and inflexible - and at the same time ultimately designed for the general good. And in this again, we can see the simple repetition of the orthodoxies of 'moral sense'; for Ferguson also, for example, the existence of the moral faculty was too obvious to require very much discussion. (2)

The few fundamental moral rules that could be perceived by all were in the last resort justified by the needs of human nature in society. In his discussion of political morality, Mackintosh pointed out the

¹ Ibid, III, 101.

² See e.g. Ferguson, Principles of Moral and Political Science, I, 159.

defect of 'act utilitarianism':

if the question of expediency be admitted, the question recurs - Who are to judge of it? The appeal is never made to the many whose interest is at stake, but to the few whose interest is linked to the perpetuity of oppression and abuse... The moment that the slightest infraction of these rights is permitted through motives of convenience, the bulwark of all upright politics is lost. (1)

And the rights of man in society should be one of those fundamental truths whose existence is self-evident.

This was never demonstrated in the Vindiciae; Mackintosh evaded the issue by suggesting that since Burke already accepted the conventional existence of natural rights prior to man's entrance into society, this was unnecessary (though he does not attempt to clarify Burke's view of natural right). Mackintosh distrusted any hypothesis that relied on the construction of a state antecedent to the social one, since the existence of some form of social state, with means for its own protection, could be demonstrated to be 'coeval and co-extensive with man.'⁽²⁾ He is far more concerned to establish that the inflexibility of general principles must involve an equal surrender of right by all to the government, and consequently equality within the state. Any deviation would involve a possible surrender to corporate interests, or to despotism. If the only criterion of government was to be the nature of the convention by which it was formed - the terms of the social contract - then any government might interpret such a convention according to its own practice, regardless of its justice or humanity:

¹ Ibid, III, 101-2

² Ibid, III, 96-7.

The King of France is not permitted to put out the eyes of the Princes of the Blood; nor the Sophi of Persia to have recourse to lettres de cachet. They must tyrannize by precedent, and oppress in reverent imitation of the models consecrated by the usage of despotic predecessors. (1)

The absurdities of prescription, this 'Gothic transfer of genealogy to truth and justice' are sufficiently exploited in the Vindiciae. For Mackintosh, as we have seen, history was a collection of experiments rather than a series of precedents. He denounced, as coming within the same category, Burke's appeal to the law of Coke and Blackstone, and that of the English constitutional reformers to King Alfred's time:

It is not because we have been free but because we have a right to be free, that we ought to demand freedom. Justice and liberty have neither birth nor race, youth nor age. It would be the same absurdity to assert, that we have a right to freedom, because the Englishmen of Alfred's reign were free, as that three and three were six, because they were so in the camp of Genghis Khan. Let us hear no more of this ignoble and ignominious pedigree of freedom. Let us hear no more of her Saxon, Danish, or Norman ancestors. Let the immortal daughter of Reason, of Justice, and of God, be no longer confounded with the spurious abortions that have usurped her name. (2)

The Declaration of Rights, then, embodied the greatest of self-evident truths; it proclaimed both the rights, and the duties of a citizen. The task of the legislators was to instil the spirit of equality among their people. Mackintosh held that the principle of complete and universal suffrage for all adult males could alone do this. He agreed with Burke in criticising the 'impotent and preposterous' property qualification imposed by the National Assembly;

1 Ibid, III, 98.

2 Ibid, III, 135.

even the poorest should not be disfranchised on the grounds that they were unproductive, since the man too poor to pay a contribution in direct taxes still paid 'is indirect taxation in the increased price of his food and clothes. All, even domestic servants, subsisted on the produce of their own labour. Similarly, he believed that the distribution of representation should be based entirely upon population, neither taxation nor property entering into the question. The individual had a right to his voice in the determining of the general will, as guarantee both of his security and of his liberty; compared to the protection of these, his property was of secondary importance.⁽¹⁾

And yet Mackintosh distinctly disavowed democracy as exercised by the mob of antiquity - an 'ochlocracy', a 'febrile paroxysm of the social body', a 'despotism of the rabble'. The will of an undisciplined and tumultuous multitude could not give the inspired and philosophic leadership required by a great state. The voter was required to be a 'disinterested, deliberate, and competent judge'; and representative arrangements had to be so controlled that they would sound the national will, but a will in accordance with the better instincts of the people.⁽²⁾ The Rousseauist implications of this are nowhere stated; but they would appear to be the only explanation for these contradictions. Representation was always, Mackintosh acknowledged, an infringement on the most perfect liberty, since no system could ensure absolute correspondence between the popular and the represented will. But a careful hierarchy of electoral

1 Ibid, III, 103-6.

2 Ibid, III, 113.

assemblies could allow the peasant and the artisan to vote, and would be at the same time too small to create any significant partial interests of their own. The primary electors would be able to use their independent judgment to choose among their equals or immediate superiors, those capable of electing a representative: the departmental electors. Such a gradation of assemblies would return an appropriate number of deputies, avoiding equally an over-large and uncontrollable assembly.⁽¹⁾

Clearly within the new constitution of France, the preservation of the unity of the national interest was imperative. The careful division of responsibilities between the different assemblies in France - municipal, administrative, primary and electoral - was one of example of this:

these several bodies are, in a certain sense, independent, in what regards subordinate and interior regulation; but they are not independent in the sense which the objection supposes, - that of possessing a separate will from that of the nation, or influencing, but by their representatives, the general system of the state. Nay, it may be demonstrated, that the legislators of France have solicitously provided more elaborate precautions against ^{this} dismemberment than have been adopted by any ~~other~~ recorded government. (2)

Each was too small ever to possess a separate interest and momentum of its own. The same argument applied to the division of France into new departments; with the old separatist provinces swept away, the new local government entities would be a source of unity rather than instability.⁽³⁾

1 Ibid, III, 104-7, 110-4.

2 Ibid, III, 107.

3 Ibid, III, 108-9.

The danger faced by the legislators was always the growth of inequality and the development of partial interests within the state. Inequality could never be uprooted, since it was essential to the economic life of the nation:

property alone can stimulate to labour; and labour, if it were not necessary to the existence, would be indispensable to the happiness of man. But though it be necessary, yet in its excess it is the great malady of civil society. The accumulation of that power which is conferred by wealth in the hands of the few, is the perpetual source of oppression and neglect to the mass of mankind. The power of the wealthy is farther concentrated by their tendency to combination, from which number, dispersion, indigence and ignorance equally preclude the poor. (1)

Political power followed the distribution of property; and constitutional laws, far from minimising this great and powerful partial interest within the state, frequently strengthened it. The constitution of checks and balances was for him merely a myth, a construction of theorists which allowed conflicting interests within the state to unite to distort the will of people. In the last resort:

there never was, and never will be, in civilised society but two grand interests,—that of the rich and that of the poor. (2)

Mackintosh, unlike Burke, and unlike Paine, did not accept that the enlightened pursuit of economic interest brought a natural harmony to society. Never in the Vindiciae Gallicae does he suggest that a government should interfere as little as possible with the economic

1 Ibid, III, 34.

2 Ibid, III, 120. It was just this aspect of the Vindiciae that one of the popular societies chose to attack. The Revolution Society of Norwich wrote to the Society for Constitutional Information: 'To James Mackintosh, author of Vindiciae Gallicae, this society offers the tribute of its approbation and gratitude, for the knowledge, the eloquence and the philosophical spirit with which he has explained, defended, and commented on the Revolution. It hesitates to assent ~~only~~ to this, ^{only} of his opinions, that 'there are but two interests in society, those of the rich and those of the poor.' If so what chance have the latter? Surely the interest of all the industrious, from the richest merchant to the poorest mechanic, are in every community the same; to lessen the number of the unproductive, to whose maintenance they contribute; and to do away with such institutions and imposts as abridge the means of maintenance, by resisting the demand for labour or by sharing its reward. As the means ^{most conducive} to this comprehensive end the Norwich Revolution Society desires an equitable representation of the people. Morning Chronicle 8 May 1792.

arrangements of society. Legislation could not make men equal, but it should be careful, as was the National Assembly, never to aggravate the natural inequalities of wealth and talent. Within the constitution no scope should be given for the domination of wealth and property. On this principle, any corporate bodies existing within the state should be regarded as instruments created by the legislature for a specific purpose, with their property subject to disposition by the public will. Members of the priesthood of France therefore had no separate, nor the whole body of the Church any collective, right of ownership to the lands of the Church.⁽¹⁾

The general will could, in Mackintosh's view, be expressed only in a single representative legislature. There were several alternatives. Burke had urged, without being more specific, that the ancient constitution of France should adapt itself to the British example. Yet the preservation of the three orders intact would have borne little resemblance to the English structure; and it would continue to preserve the aristocracy as a caste, the Church as a powerful establishment, and the strength of the monarchy's influence. A union of selected nobility and clergy in an Upper House would equally have disadvantages; it would degrade those who were not chosen, and would, again, greatly strengthen the prerogative of the monarch. The constitutional party in the Assembly had suggested a Senate, rather similar^{to} the American model, chosen by the King, for life, from a list submitted by the provinces. This body, from its permanence, would have enjoyed entrenched power, and superiority over the Assembly itself; the

1 Ibid, III, 44-5.

dangers of 'corporation spirit' were very great. The example of England, where, Mackintosh considered, a nominally balanced constitution had merely fortified the unity of class interest, proved not the desirability, but the disadvantages of preserving separate powers within the state.⁽¹⁾

The other provisions of the constitution were reviewed briefly. Mackintosh disapproved entirely of the exclusion of the royal ministers from the Assembly; such a measure would increase the secret influence exerted by the Crown, and deter men of talent from entering the Cabinet.⁽²⁾ Tentatively, he approved the provisions relating to the executive power. The King had, in spite of Burke's denials, a suspensive veto. The monarch's prerogative of proposing to the Assembly that war be declared, a question on which the King alone possessed the initiative, was, at least in theory, not far removed from that of the English constitution; it was to be hoped, in view of the declarations of her leaders, that a pacific policy would make it rarely needed:

The glory of heroism, and the splendour of conquest, have long enough been the patrimony of that great nation. It is time that it should seek a new glory, and a new splendour, under the shade of freedom, in cultivating the arts of peace, and extending the happiness of mankind. ⁽³⁾

Such wholly republican aspirations were hardly relevant to the problems of the British constitution, to which Mackintosh finally turned. Behind the mythology of the constitution, as we have seen, lay the interest of a single class:

1 Ibid, III, 114-20.

2 Ibid, III, 121.

3 Ibid, III, 129~~7~~

if the two branches of the legislature, which it is pretended ~~rule~~^{control} each other, are ruled by the same class of men, the control must be granted to be imaginary. The great proprietors, titled and untitled, possess the whole force of both Houses of Parliament that is not immediately dependent on the Crown. The peers have a great ~~influence~~^{influence} in the House of Commons. All political parties are formed by a confederacy of ^{the} members of both Houses. The Court part, acting equally in both, is supported by a part of the independent aristocracy; - the Opposition by the remainder of the aristocracy, whether peers or commoners. Here is every symptom of collusion, - no vestige of control. (1)

To Mackintosh, supporting Dr. Richard Price, the revolution of 1688 had been 'a direct emanation of the sovereignty of the people' which established the principles of a free government; but at the same time the Vindiciae dwelt on the many faults of the leaders of that revolution, and the distinction which could be made between their language and their conduct.⁽²⁾ They had, in fact, spoken equivocally of their own justification, conciliating prejudice and imposing on ignorance; yet this justification could be no other but reason and justice. The claims of lawyers were irrelevant, since the failure of government meant the failure of law itself:

it is because there are no remedies to be found within the pale of society, that we are to seek them in nature, and throw our parchment chains in the face of our oppressors. (3)

Mackintosh found, when he returned to the actual debates of this period, rather than to the statutes, that the tone of Somers and Maynard, among others, fully demonstrated the claim that the revolution represented the final remedy of election by the nation to the Crown. Burke had quoted the equivocations, ignoring the underlying principles; the Vindiciae attempted to balance both:

1 Ibid, III, 119.

2 Ibid, III, 132.

3 Ibid, III, 134.

Reverence for the principles, and pardon of the defects of civil changes, which arise in ages but partially enlightened, are the plain dictates of common sense. Admiration of Magna Carta does not infer any respect for villainage; reverence for Roman patriotism is not incompatible with detestation of slavery; nor does veneration for the Revolutionists of 1688 impose any blindness to the gross, radical, and multiplied absurdities and corruptions in their political system. (1)

The principles of English politics had therefore once been recognised to be the same as those on which the French and American constitutions were based; yet still the constitution was riddled with abuse. The pretence that the people had a secure footing within the system should no longer be tolerated; its hypocrisy was evident in all aspects of political life. The so-called responsibility of ministers through the process of impeachment had become a farce. State prosecutions were lengthy and indecisive - or they were overwhelmed by popular indignation. Then, the nominal power of voting supplies no longer truly belonged to the Commons; under the present system it could not be practicably refused. Above all, it was clear that Parliament, with all its privileges, no longer acted as the guardian of the people, nor could it be even remotely seen as an adequate method of assessing the general will. Proofs of the corruption and injustice of the government, and especially of Pitt's government were to be seen in the barbarity of the statute book, in the surviving system of feudal tenures in Scotland, in the exclusion of dissenters from public office, in the venality of the Commons, and, especially, in the censorship exercised over the Press.⁽²⁾ The indictment of the government was cumulative and sweeping; the only answer was for all the oppressed to unite:

1 Ibid, III, 147.

2 Ibid, III, 152.

Men are oppressed because they have no share in their own government. Let all these classes of oppressed citizens melt their local and partial grievances into one great mass. Let them cease to be suppliants for their rights, or to sue for them like mendicants, as a precarious boon from the arrogant pity of usurpers. Until the Legislature speaks their voice it will oppress them. Let them unite to procure such a Reform in the representation of the people as will make the House of Commons their representative. (1)

In England, this would be sufficient to reduce the claims of King and Lords, who held their power only through the failure of the people to speak through their representatives. Mackintosh did not commit himself to the extent to which democracy was to be infused into the Commons; but he indicated that reformers should not feel bound to copy the French and American revolutions slavishly. Yet, although the grievances of England did not at that time justify revolution, which could be averted by moderation on the part of her governors:

Man is everywhere man: imprisoned grievance will at length have vent; and the storm of popular passion will find a feeble obstacle in the solemn imbecility of human institutions. (2)

Burke's reaction to the revolution in France was that most likely to stimulate catastrophe in England. Mackintosh's advocacy of democracy was therefore slightly more ambiguous in its application to England; but he never faltered in his insistence on the necessity for immediate and radical reform.

It has been suggested that the Vindiciae Gallicae was a radical polemic in which neither the antiquarian constitutionalism of English political writing, nor the popular but shallow optimism of Paine, were dominant; instead, Mackintosh's thinking should be placed within

1 Ibid, III, 152.

2 Ibid, III, 155.

the context of republican writing in the eighteenth century. In this tradition, the form of government was of less significance than the relationship between the citizen and his state. First, the freedom of the republic was gained in the long conflict with despotic power. Such liberty could be exemplified by the history of the classical republics, or from existing states who had struggled for their freedom from absolute monarchy in Europe. Secondly, there was an ideal of citizenship contained within the republican tradition. The citizen was a man participating in the political life and the moral pursuits of the state; civic duty was equated with virtue and happiness. The task of the government was to release man's potentialities for good, and, at the same time, to recognise and repress his selfish instincts. Government was an indispensable mechanism for the fulfilment of the individual. The view of government expressed here is, of course, some way from that of Paine. But, surprisingly, there are points on which Mackintosh is nearer to Burke. Although Mackintosh disclaims history as a political criterion, clearly his very definition of the republican ideal depends on the long dialectical struggle between freedom and despotism. These ambiguities remain to be worked out; only in the Vindiciae Gallicae, among Mackintosh's writings, is the full radicalism of the republican prescription preached - elsewhere it is the negative liberalism of the republic as the barrier to arbitrary power which comes to dominate his political thinking.

III THE TRANSITION TO WHIGGISM 1791-7.

The immediate and overwhelming success of the Vindiciae Gallicae enormously enhanced James Mackintosh's prospects; his success in his future career was virtually determined by the reception given to this work. Although during this period he continued to work for different newspapers, he moved gradually from the disreputable status of a journalist to the respectability of the Bar. On the strength of the Vindiciae, he became entitled to a leading place among the literary figures moving on the edge of London's political scene; he made the acquaintance of all shades of opinion prominent in the defence of the French Revolution, dissenters, Whigs and radicals. This chapter will attempt to trace the course of these contacts. Nevertheless, the work he published during this period, little though it was, makes it clear that Mackintosh's 'conversion' by Burke - at an over-publicised interview at Beaconsfield in 1797 - served merely to confirm his already declared views. The transition from the liberal defender of the Revolution to the liberal adherent of Burke was already in progress. The motives underlying this transition were various; undoubtedly personal ambition was an important force in bringing Mackintosh closer to the acceptable Whig orthodoxy. But in spite of the Whig mask, the unchanging elements of his thought were derived from that distinctive view of society which was inculcated in the teaching of the Scottish Universities, and this view was itself to penetrate and mould the Whig approach. (1)

¹ H. Ben-Israel, English Historians and the French Revolution, Cambridge, 1968, 38, makes this point, but does not indicate its obvious origins. 'The fact that people like Jeffrey and Mackintosh were arriving at organic notions of society and historical development through thought about the Revolution brings out a continuity of some importance. Their ideas grew out of eighteenth century English thought through the direct influence of Burke. The Burkian influence is here harnessed in the interests of "liberty". The notion of organic social development was in Whig thought an indigenous growth not shaped by Germany...Most important, it grew without a conscious philosophical revolt against the eighteenth century.'

Naturally to the great majority of his opponents, Mackintosh was merely another of the radical brood, to be attacked in the same breath as Thomas Paine, Thomas Christie, Priestley, George Rous, and others.⁽¹⁾ Burke was slow to read the Vindiciae; on 2 August 1791 he wrote to Dr. Laurence:

I have not read, or even seen Mackintosh; but Richard tells me, that it is Paine at bottom - and that indeed all the writers against me are, either Paine with some difference in the way of stating, or even myself. (2)

Burke's Appeal from the New to the Old Whigs, published at this time, was directed against both Paine and the democratic theorists, and the acquiescence in their agitation of the 'modern Whigs in parliament'. This group was actually the principal target, particularly in their imagined function as intermediaries between the popular clubs and societies, and the official Whig leaders. Perhaps Burke had Mackintosh in mind when he wrote of insidious and influential intermediaries:

As to leaders in parties, nothing is more common than to see them blindly led. The world is governed by go-betweens. These go-betweens influence the persons with whom they carry on the intercourse by stating their sense to each of them as the sense of the other; and thus they reciprocally master both sides. (3)

One able writer who did, however, realise the strength of the Vindiciae was the translator and populariser of Burke in Germany, Friedrich von Gentz, at this time a clerk in the Prussian bureaucracy.

1 Cf. e.g. A Gentleman of Scotland Observations on Mr. Mackintosh's Defence of the French Constitution and its Admirers, London 1792, 1.

2 The Correspondence of Edmund Burke, edited by T.W. Copeland et al. 9 vols., Cambridge 1958-70, VI, 311-2. Cited below as Burke Correspondence.

3 Burke An Appeal from the New to the Old Whigs in The Works and Correspondence of the Right Honourable Edmund Burke, edited by Charles William, Earl Fitzwilliam and Sir Richard Bourke, 8 vols., London 1852, IV, 475. Cited below as Burke Works.

As his biographer remarks, in many ways Gentz' intellectual development corresponded to that of Mackintosh; they were later to find each other remarkably congenial.⁽¹⁾ Gentz had been converted from an early enthusiasm from the Revolution by reading Burke; but he remained throughout his life fundamentally a man of the Enlightenment, with little sympathy for Burke's fundamentally religious outlook.⁽²⁾ In a series of essays attached to his translation of the Reflections, Gentz included a discussion of the Vindiciae, 'Versuch einer Widerlegung der apölogie des Herrn Makintosh'. He praised Mackintosh highly; his work towered above that of his English contemporaries.⁽³⁾ But in reviewing the Vindiciae chapter by chapter, Gentz attacked the author's interpretation of the events of 1789, and his thesis that the revolution was a spontaneous, nation-wide, upsurge of liberty. He singled out for criticism also Mackintosh's dismissal of the theory of a balanced constitution; Gentz's admiration of the British constitution as a framework in which opposed forces could regulate the progress of the nation was to remain a consistent element in his thinking.

Another, earlier, critic, was Mackintosh's Edinburgh friend, John Wilde, who lamented Mackintosh's democratic sympathies, accused his work of being distinctly Paineish in tone, and argued that while compassion for the suffering poor was a natural emotion, Mackintosh's attempt to excite his readers' pity by depicting their general misery was merely a polemical artifice. In a tract published two years

1 G. Mann Secretary of Europe, Yale, 1946, 94.

2 A.R. de Cléry Les idées politiques de Frédéric de Gentz, Lausanne, 1917, 17, and passim.

3 F. von Gentz Betrachtungen uber die franzosiche Revolution... neu bearbeitet, Berlin, 1793, 226.

later, Wilde devoted all his energy and about two hundred pages to attacking the work of his friend. But he did agree that his view was an exceptional one among the literati:

Laing, who said Burke's book was nonsense before he read a word of it, and who to this day has not read fifty pages of it, says your book is the best he has ever read, and exclaims 'how great ~~it~~ ^{it} is to see a Scotsman drive a muddy Irishman out of the field'. (1)

And certainly, it seems, Mackintosh's references to Scottish history and to his country's grievances helped to ensure the success of the work in Scotland. His arguments were adopted by many able pamphleteers. (2) Thomas Reid, the philosopher, was struck by the merits of the work, and spoke of it as 'one of the most ingenious works of the kind he had ever met with'. (3) James Dunbar, Mackintosh's old tutor, wrote to Samuel Parr:

Our ingenious friend, Mr. Mackintosh, has, in my opinion steered a middle course between Scylla and Charybdis. (4)

Although the real radicalism of the Vindiciae was evidently suspected by some members of the Whig party, (5) Mackintosh was given its accolade - in June 1791 he was introduced to Charles James Fox, at his house in South Street. (6) Another important, and rather more enthusiastic admirer was Sir George Staunton, (7) who on 10 May wrote to Mackintosh urging him to undertake some less ephemeral work:

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- 1 John Wilde to James Mackintosh 28 June 1791. B.M. Add. MSS 52451. Partially printed Memoirs I, 76-8; J. Wilde An Address to the Society of the Friends of the People, Edinburgh 1793.
- 2 H.W. Meikle Scotland and the French Revolution, Glasgow, 1912, 60.
- 3 Memoirs I, 380.
- 4 J. Johnstone The Works of Samuel Parr LL.D. with Memoirs of his Life and Writings, 8 vols., London, 1828, VII, 460.
- 5 Fox to Lord Holland 26 April 1791. Lord John Russell (ed.) Memorials and Correspondence of Charles James Fox, 4 vols., London 1853, I, 363.
- 6 Memoirs I, 322.
- 7 Sir George Leonard Staunton (1737-1801), diplomat. In London 1759, where he made Dr. Johnson's acquaintance. Served in the West Indies from 1762 to 1779, and in 1781 accompanied Lord Macartney to Madras; on returning home in 1784 was created a baronet. In the next few years he became a friend of Burke's; in 1792 he went with Lord Macartney to China. D.N.B.

As your writings will be lasting, I think I would not give them temporary titles, such as answer to ~~Q~~ but Thoughts on liberty, Considerations on what constitutes a well-regulated society, viz. the welfare of all its members, or Examination whether the lower orders must always be miserable as they now are? cannot society subsist compatibly with the Ease, comfort and happiness of all its members? Was man intended to work incessantly from sunrise to sunset with scarcely any pleasure, corporeal or mental, to obtain the means of ~~supporting~~^{continuing} his existence? (1)

But even Staunton was, by 1792, like so many others, regretting his enthusiasm. (2) In the first flush of success, however, Mackintosh was lionized; he wrote to Bailie John Mackintosh:

The general popularity and the particular notice of distinguished persons which I have been so lucky as to acquire, have so smoothed the way to success at the ~~moment~~^{fact} that the least sanguine of my friends are no longer doubtful of me. I may without vanity say that the first literary and political characters of the kingdom have courted my commissions, and were I disposed to shipwreck my future hopes by the prostitution of my character and pen, the temptation of considerable income is not lacking. (3)

He was introduced to Grey, Whitbread, the Duke of Bedford, and others; (4) since he was already well established among Sheridan's journalistic following, Dr. Parr's advice to that politician to read 'the mighty work of my friend and your friend and Mr. Fox's friend Mackintosh'

1 Staunton to Mackintosh 10 May 1791. B.M. Add. MSS 52451.

2 Sir G.T. Staunton Memoir of the Life of Sir G.L. Staunton, privately printed, Havant, 1823, 348.

3 Mackintosh to Bailie John Mackintosh, 11 November 1791. C. Fraser-Mackintosh Letters of Two Centuries, 318-20.

4 R. Phillips Public Characters of 1806, 239.

must have been superfluous.⁽¹⁾

Mackintosh was certainly offered money by the party leaders; whether he actually received any payment cannot be determined.⁽²⁾

It is difficult to see Mackintosh refusing a gift of this kind; possibly there was some opposition to such open approval of the Vindiciae within the party, and certainly it was true that William Adam was having difficulty in keeping the party funds on a sound footing.⁽³⁾ Perhaps it was in place of more tangible benefits that Mackintosh was given a place on the staff of the Morning Post, the newspaper that Sheridan was building up as the spearhead of the opposition Press, in May 1791. Mackintosh's contributions cannot be identified; the historian of the newspaper suggests that he probably inspired much more than he wrote.⁽⁴⁾ He took a leading part also in the formation of a new society, the Friends of the Liberty of the Press, which met for the first time on 3 June 1791. The society celebrated 14 July at the Crown and Anchor Tavern, where George Rous took the chair, and Mackintosh was the Master of Ceremonies.⁽⁵⁾ The society does not seem to have functioned actively, however, until it was revived in the following year.

1 T. Moore Memoirs of the Life of the Right Honourable Richard Brinsley Sheridan, London, 1825, 479.

2 W. Wallace Notice of the Life, Writings and Speeches of Sir James Mackintosh, xi. 'Sheridan said that he supposed a hundred from the fund at Brookes's would not come amiss to the author of the Vindiciae. The suggestion was no doubt readily assented to, but went no further. The fund was at the time impounded in consequence of the Whig schism on the subject of the French Revolution'. Wallace is an unreliable authority, but there is supporting contemporary evidence: Lewis Grant M.P. to Sir James Grant 21 July 1791. 'Dr. Mackintosh & I will probably go down to Yorkshire together - his book has raised him very much in the eyes of the world & I have no doubt will conduce to more solid benefit.-The heads of the opposition sent for him & a subscription is to be made for him until they could give him something by being in office.-He was talking with me about it, however, and he settled to refuse it.' Seafeld Muniments, GD 248/362/4. Scottish Record Office. Grant himself was a supporter of the Ministry.

3 F. Gorman The Whig Party and the French Revolution, London 1967, 79.

4 L. Werkmeister The London Daily Press 1772-92, 343; W. Hindle The Morning Post 1772-1937, London 1937, 66.

5 Werkmeister op.cit. 344-5.

During the next few months, Mackintosh also made the acquaintance of Dr. Samuel Parr, the Whig scholar and clergyman, who was one of the few members of the Church of England to proclaim publicly his allegiance to Charles James Fox, and who had been greatly impressed by the Vindiciae.⁽¹⁾ Dr. Parr also acted, on occasion, as one of Sheridan's intermediaries, in connection with Whig propaganda through the press and pamphlet literature.⁽²⁾ In September 1791 Mackintosh was entertained by Parr in his parsonage at Hatton; and with Parr Mackintosh went on a visit to Birmingham where they met William Russell⁽³⁾ and other leading dissenters.⁽⁴⁾ He then became involved in the conflict between Parr and the Rev. Charles Curtis, a strong Tory and orthodox clergyman, whom the Whig clergyman had accused of writing anonymous letters. At a meeting held to attempt a reconciliation, Mackintosh recorded the minutes; these were printed in a tract issued by Parr, in which this purely personal antagonism was seized upon as an opportunity for the discussion of wider political issues - 'a substantial political tract lay sandwiched between the scenes of provincial comedy'.⁽⁵⁾ This pamphlet also provided Parr with an opportunity of publishing his opinion of Mackintosh's works:

In Mackintosh, then, I see the sternness of a republican without his acrimony, and the ardour of a reformer without his impetuosity. His taste in morals, like that of Mr. Burke, is equally pure and delicate with

1 W. Derry Dr. Parr. A Portrait of the Whig Dr. Johnson, Oxford 1966, 138.

2 Moore Memoirs of Sheridan, 433; D. Ginter 'The Financing of the Whig Party Organisation, 1783-93'. American Historical Review, LXVI, 423n.

3 William Russell (1740-1818) Birmingham ironmaster and philanthropist; as a Unitarian layman, a member of the London dissenting committee from 1787; a patron and ardent supporter of Dr. Priestley, he fully supported the attempt to found a Warwickshire Constitutional Society. His house was among those burned by the rioters in 1791. In 1794 he emigrated to America. S.H. Jeyes The Russells of Birmingham in the French Revolution and America 1791-1844, London, 1911, R.B. Rose 'The Priestley Riots of 1791', Past and Present 18, 1960.

4 James Mackintosh to Richard Sharpe, 9 Dec. 1806, B.M.Add. MSS 52451.

5 Derry Dr. Parr, 138-145.

his taste in literature.—His mind is so comprehensive, that generalities cease to be barren, and so vigorous, that detail itself becomes interesting. He introduces every question with perspicuity, states it with precision, and pursues it with easy and unaffected method. Sometimes, perhaps he may amuse his readers by excursions into paradox; but he never bewilders them by flights into romance. His philosophy is far more just, and far more amiable than the philosophy of Paine, and his eloquence is only not equal to the eloquence of Mr. Burke. He is argumentative without sophistry, fervid without fury, profound without obscurity, and sublime without extravagance. (1)

Another consequence of Mackintosh's visit to Parr was his engagement to William Russell to defend the cause of the dissenters in print. This later became one of the causes of the lengthy quarrel between Parr and Mackintosh; and Mackintosh justified his own behaviour in a long letter from India. Dr. Parr had, he claimed, suggested the subject, and had recommended that the dissenters make him a gift in return for his labour. Mackintosh had received £200, of which he had paid £50 for the insertion of some paragraphs in the Morning Post. He had continued to collect material and information on the riots for Church and King.⁽²⁾ It is clear, however, that at the same time Mackintosh was also priming Samuel Whitbread with these materials for his motion in Parliament on the Birmingham riots; he was responsible for gathering the testimony of Dr. Parr:

Mr. Whitbread, a young gentleman of very vigorous talents, pure sentiments, and elevated spirit, has announced an inquiry into the Birmingham riots... I think it would be an act worthy of you to put Mr. Whitbread in possession of the facts which you know, the conclusions which you have formed, and the sentiments which you have felt... The time, my dear Sir, is pressing. His motion comes on next Monday. In a letter to me you could unbosom

1 (Dr. Parr) A Sequel to the Printed Paper lately circulated in Warwickshire by the Rev. Charles Curtis, brother of Alderman Curtis, a Birmingham Rector, London 1792, 79-81. Mackintosh's contribution to this pamphlet is on pp 19-23, dated 7 December 1791.

2 Mackintosh to Richard Sharpe, 9 December 1806, B.M.Add. MSS 52451.

yourself with the most perfect safety. You could instruct me what was to be communicated, and what to be suppressed; what was to be unfolded and what was only to be hinted at. (1)

And Mackintosh was also present when William Russell discussed the issue with Whitbread.⁽²⁾ The letter from Dr. Parr was used, in the long and powerful speech made on behalf of the dissenters' cause by Whitbread on 21 May 1792.⁽³⁾ It is of course impossible to estimate the extent of Mackintosh's 'devilling' for the leaders of the younger Whigs; but the scanty evidence that does remain seems to point to his being in their confidence sufficiently to be called upon on important occasions. As the riots ceased to be a live political issue, the projected pamphlet was abandoned; but Mackintosh continued to be on friendly terms with the Russells. After his visit to France in 1792, he went to Warwickshire on a visit to their house, and later remembered meeting there a number of the leading dissenters of Birmingham.⁽⁴⁾

A more significant development was Mackintosh's increasing involvement in the politics of the 'new Whigs' so castigated by Burke. The prominent role played by these younger members of the party in the debates on the Oczakov crisis had served to unite them, while at the same time temporarily papering over the cracks in the party's facade. The formation of the Association of the Friends

¹ Mackintosh to Parr, ¹⁷~~1792~~ May 1792, Johnstone Works of Samuel Parr, I, 395.

² Johnstone to Samuel Parr n.d. Bodleian MSS Eng. Misc. c398 f3.

³ Parliamentary History XXIX, 1435.

⁴ Mackintosh to Richard Sharpe, 9 December 1806, B.M.Add.MSS 52451.

of the People, the first meeting of which was held on 11 April 1792, brought these divisions clearly into the open.⁽¹⁾ The policy of the Association in the next few months was determined by the necessities of party: of maintaining friendly relations with Fox, who was displeased at so unequivocal a commitment to domestic reforms, and of trying, unavailingly, not to alienate too far the conservative Whigs. The ambiguity of Fox's position enforced moderation on his younger disciples who in their turn enforced it on their followers. As one of the only four non-M.P.'s on the Committee of the Association, Mackintosh was in no position to take any initiative; his very presence seemed to some evidence of a dangerous radicalism. In attempting to become a member of the Whig Club Mackintosh had been blackballed twice:

there appeared almost as many black-balls as white ones. I heard Mr. Sheridan complain of this outrageous expression of Toryism. This instance, among many others of their late conduct has convinced every one that they are not the men they profess to be, and you will soon see that society deserted by every man in it. Mr. Fox was much enraged when they blackballed Mackintosh. (2)

Mackintosh's biographer states that Mackintosh 'was appointed to the honorary post of its secretary, and was the author, either wholly or in a very principal degree, of their Declaration'.⁽³⁾ But there seems to be no supporting evidence for this. Daniel Stuart is also said to have been appointed deputy secretary to the Society.⁽⁴⁾

1 On the Friends of the People see: P.J. Brunsdon 'The Association of the Friends of the People'. Unpublished M.A. thesis, Manchester 1961; H. Butterfield 'Charles James Fox and the Whig Opposition in 1792, Cambridge Historical Journal, XI, 1949, 293-330; F. O'Gorman The Whig Party and the French Revolution, London 1967, 82ff; E.C. Black, The Association. British Extra-parliamentary political organisation 1769-93, Harvard 1963, 219ff.

2 J. Tweddell to Dr. Parr, May 1792, Johnstone Works of Dr. Parr, I, 443.

3 Memoirs, I, 79.

4 M. Stuart (ed.) Letters from the Lake Poets, Samuel Taylor Coleridge, William Wordsworth, Robert Southey, to Daniel Stuart... 1800-38. (With a biographical sketch of Daniel Stuart by his daughter Mary), London 1889, x.

The evidence given by Stuart at the trial of Thomas Hardy confirms that he acted at times as secretary to the committee of the society, taking responsibility for the correspondence, and seeing publications through the printers.⁽¹⁾ However, Stuart did not take up his duties or his lodgings in Frith Street in the first few months of the Society's existence; it is possible, then, that Mackintosh may have performed secretarial duties for the Committee in its early stages.

The proceedings of the Association, and the resolutions passed from 11 April to 5 May make it clear how far the leaders of the group were on the defensive against, on the one hand, the storm of hostility they faced in Parliament, and on the other the unwelcome and embarrassing reception given to their society by the newly formed democratic groups of artisans in London and the provinces. The declared aims of the Association were to achieve free elections, with a more equal representation of the people, and 'to secure to the people a more frequent exercise of the right of electing their representatives'; their declared mentors were, predictably, Locke, Blackstone, and the leaders of earlier constitutional reform movements, Chatham, Richmond, Lansdowne. The society's organisation was exclusive; the subscription was 2½ guineas, and the new members had to be recommended by two others, and to win the approval of nine-tenths of the society in a ballot.⁽²⁾

1 A Complete Collection of State Trials...from the earliest period to the year 1783, with notes and other illustrations: compiled by T.B. Howell...and continued from the year 1783 to the present day by T.J. Howell, 33 vols., London 1809-26, XXIV, 995-9, 1023, 1065.

2 Proceedings of the Society of the Friends of the People, associated for the purpose of obtaining Parliamentary Reform in the year 1792, London, 1793.

In their initial declaration of policy, the Association denied the influence of recent events in France. Taking little account of the growth of democratic agitation in the country, the society argued that since they happened to be enjoying a period of political tranquillity, the time should be regarded as a convenient one for curing an existing evil. The accumulation of abuses could possibly in the future bring about a potentially revolutionary situation; a recent example of the consequences of corruption was to be seen in the exercise of ministerial power during the Oczakov crisis, when the Commons had acted against 'the real interests and..acknowledged sense of the people'.⁽¹⁾ The declaration therefore called for an end to what were regarded as defined and particular grievances, not the 'indefinite language of delusion'. Theory was still a dangerous and explosive tool:

We view man as he is: the creature of habit as well as of reason. We think it therefore our bounden duty to propose no extreme changes, which, however, specious in theory, can never be accomplished without violence to the settled opinions of mankind.

Yet, as reformers, the Friends of the People upheld the principles of the constitution:

as objects of just affection, not from any implicit reverence or habitual superstition, but as institutions best calculated to produce the happiness of man in civil society. (2)

In its correspondence with provincial reform societies, the Association found itself competing with the Society for Constitutional Information for the leadership of the agitation in the country; but the vigorous direction of Horne Tooke's campaign compared so favourably with the

1 Ibid, 22.

2 Ibid, 31.

nervous inaction of the Friends of the People that the rivalry was soon decided. It was, in the circumstances, unfortunate for James Mackintosh that this Society had on 9 March 1792 chosen to confer honorary membership upon him; unlike Joel Barlow who had been similarly honoured, and other friends - Richard Sharpe, Lord Daer, Joseph Gerrald - he never again took advantage of the privileges of membership.⁽¹⁾

Whether or not he regarded the work as a semi-official commission, as his biographer suggests,⁽²⁾ Mackintosh published at this time a short polemical piece: A Letter to the Right Honourable William Pitt, on his Apostasy from the Cause of Parliamentary Reform;⁽³⁾ this was submitted before publication to William Adam, the Whig party manager.⁽⁴⁾ This attack was sparked off partly by the Royal Proclamation against Seditious writings, of May 1792, and partly by the failure of Lord Grey's motion for Parliamentary reform, also in that month. In the Letter Mackintosh naturally compared Pitt's earlier career as a reformer, when, with all the advantages that his father's name could bring, he defended the reform movement against all the hackneyed arguments of reactionaries, to his indifference after 1785, when, corrupted by the royal power he exercised, he allowed the question to remain forgotten. Only when Charles Grey brought forward a motion

1 P.R.O. T.S. 11/962/3508 f51. Mackintosh was 'proposed as an honorary member by Mr. Tooke and seconded by Mr. Sharpe'. For Mackintosh's cool acceptance of the honour done him cf. T.S. 11/952/3496(2), and The Times 28 March 1792.

2 Memoirs, I, 80, The need for publicity was certainly felt: J. Tweddell to Dr. Parr 5 July 1792. 'I wish you would write a letter to Mackintosh for the express purpose of advising him to write something immediately about our society. It is requisite that something be written, and he is the man most fit for the undertaking: but he is idle, very idle.' Johnstone Works of Samuel Parr VIII, 134.

3 London, July 1792.

4 James Mackintosh to William Adam n.d. (1792). Charlotte St. Wed. evening. Blair Adam papers. Box for 1792. 'If you are of opinion with me that it still has its use it shall (with your corrections) go to the Press. The success of the financial juggle precludes, I confess, the hope of popular effect, but whatever perhaps can be done against Mr. Pitt's reputation as a statesman ought to be attempted at the close (probably perpetual) of his appearance as a Continental politician.'

for moderate and practicable reform did Pitt rouse himself in defence of those sanctuaries of freedom, the rotten boroughs of England. Pitt's hypocrisy, very different from the Toryism of the corrupt or the unyielding reactionary, could be ascribed only to a kind of 'chronological morality', evident when he informed the Commons that the grievances which so cried out for reform in 1782 no longer existed, since the people were peaceful and contented.⁽¹⁾ Yet, Mackintosh argued, in 1782, when there had been some justification for fear of general disorder, Pitt had himself inflamed the situation. The calm of 1792 provided the most obvious security for reform. And the most obvious of the people's grievances was still as live an issue as it had been in 1782, that is 'the perpetual acquiescence of the House of Commons in the dictates of the Minister of the Crown', of which the best example was Pitt's recent Russian policy. Then the minister had been forced to yield, not by the Commons, but by:

that natural authority of public opinion, which is independent of forms of government, and which would have produced the same effect in most of the simple monarchies of civilised Europe. (2)

Again the French Revolution was dismissed as irrelevant to the English experience, and to be considered only in so far as it impinged on that experience. This it did: for the nations of Europe were moving inescapably in the direction of either despotism or extreme democracy, and England could in no way escape the prevailing spirit. There was only one solution to both alternatives: reform of the representative system would counter the effects of the success, or of the failure, of the revolution in France.

1 A Letter to Pitt, 2nd edition, London 1793, 20.

2 Ibid, 25-8.

The discussions produced by the French Revolution had given birth to exaggerated ideas of liberty on ~~the~~ one hand, and had furnished a ground to some men, and a pretext to more, for exaggerated fears of anarchy on the other...Many honest men were driven into Toryism by their fears. Many sober men were betrayed into Republicanism by their enthusiasm. (1)

Yet this provided a great opportunity for a reforming statesman to heal such divisions; in place of this Pitt had chosen to create:

a spirit of Toryism more indiscriminate, more abject, and more rancorous than has existed in England since the accession of the House of Hanover. (2)

The Friends of the People had nevertheless taken up the task of uniting the two sides. And to this Pitt's answer had been the Proclamation, which confused sedition with reform and indiscriminately damned all movements of political change. What needed exploring were his own motives; his repressive policies were certainly having the effect of driving some towards republicanism. Perhaps this exploitation of factional differences was a calculated policy. Pitt seemed to have shown a masterly indifference to the possibilities of conflict between the different orders of society, or of the awakening of the oppressed nations, Scotland and Ireland:

What were these dangers to you? The Toryism of the higher classes would last your time, and ^{an} collision between the opposite orders in society, which the diffusion of extreme opinions among them might produce, was viewed without terror by him whose heart had no virtuous interest in the future fate of his country. (3)

Yet at the same time Pitt's calculating mind was at work on the possibility of a different course of events:

Cold, stern, crafty, and ambiguous, he must be, without those entanglements of friendship and those restraints of feeling, by which tender natures are held back from desperate enterprises. No ingenuousness

1 Ibid, 38.
 2 Ibid, 39.
 3 Ibid, 41.

must betray a glimpse of his designs; no compunction must suspend the stroke of his ambition...The absence of gracious and popular manners, which can find no place in such a character will be well compensated by the austere and ostentatious virtues of insensibility. He must possess the parade without the restraints of morals...If such a man arose at any critical moment in the fortune of ~~the~~ State; if he were unfettered by any great political connexion; if his interest were not linked to the stability of public order by any ample property; if he could carry with him to any enterprise no little authority and splendour of character; he indeed would be an object of more rational dread than a thousand Republican pamphleteers. (1)

Pitt, measured against the Whig criteria, emerges as a man without ties or weight or real stake in the country, likely to advance himself and the cause of strong government by whatever means fell conveniently to hand. The Letter was an orthodox Whig production; the danger to the constitution came essentially from the executive branch of government, rather than from privilege or wealth. The lower orders were to be kept tranquil and contented, so that democracy should never become so great a danger as despotism.

The pamphlet had a good reception from those who counted; Charles Grey was one of the first to receive a copy, and wrote enthusiastically:

I read it immediately with the eagerness which any production of yours must occasion, and I cannot express my opinion of it more strongly than by saying that it answers^{ed} every expectation I had previously formed. I do not mean to select one part as better than another, but the reasoning on the probable consequences either of the failure or of the success of the French Revolution struck me particularly... But the whole is powerful ~~and~~ convincing & I am very sanguine as to the effect it will produce. (2)

¹ Ibid, 47.

² Charles Grey to James Mackintosh 11 July 1792, B.M.Add.^{MSS} 52451. Partially printed Memoirs I, 82.

And Dr. Parr, too, approved of both the contents and the style.⁽¹⁾
 The Monthly Review clearly discerned, however, what was happening to the author of the Vindiciae Gallicae. The 'artificial thunder' of his bombastic prose, once masked by the intellectual fireworks of the Vindiciae now appeared affected and assumed; the reviewer was aware of the identity of the author and of the contrast between the earlier cool analysis and the new 'cant of party vehemence and exaggeration':

We therefore take the liberty of advising him to consult his own understanding, unbiassed by party attachments, to seek truth from all quarters; and, when he finds it, to express it in the language of nature divested of affectation. (2)

Later readers were to find a considerable irony in the work; but even David Ricardo considered that it furnished some useful points in the continuing debate on parliamentary reform.⁽³⁾

There is much other evidence to show how in 1792 Mackintosh's opinions were veering. He wrote to Parr on his earlier work:

I may have been deluded in my historical judgment of characters and events.- I may have stated principles too widely, and expressed sentiments too warmly (it was easier to imitate my illustrious antagonist in these defects than in his inimitable excellencies); but whatever may have been my historical delusions or my speculative excesses, my sentiments and my conduct as a citizen shall ever be those of a man who 'has no choice to make between slavery and anarchy' and who hates the quiet of servitude only a little more than he dreads the convulsions of freedom...To confess a truth, many of my principles are not a little mitigated and qualified... (4)

1 Dr. Parr to Mackintosh, 8 July 1792, Memoirs, I, 83.

2 Monthly Review, 2nd series, XI, 1792, 221. The reviewer was Thomas Pearne (1753-1827), a classical scholar of Peterhouse, politically liberal, who had reviewed Burke, Paine, and much of the subsequent literature. B. Nangle The Monthly Review, Second Series, 1790-1815, Oxford, 1955, 52.

3 The Works and Correspondence of David Ricardo, Edited by P. Sraffa, with the collaboration of M.H. Dobb, 10 vols., Cambridge, 1951-55, VIII, 62, 68, 77, 84.

4 Mackintosh to Parr, ~~1792~~ May 1792, Johnstone, Works of Samuel Parr, I, 395.

This trend was adequately illustrated in a public letter from George Rous, also a Whig writer, to Mackintosh, giving his reasons for not celebrating 14 July in that year; democratic agitators had become the adversaries of reformers, rather than their allies. Only the aristocracy could now give a lead, and the policy of moderate reformers should be to conciliate rather than to inflame, and to give the ministry no pretext for alarm.⁽¹⁾ During the summer Mackintosh visited France, probably from August to September;⁽²⁾ little is known of how he spent his time there.⁽³⁾ In England one newspaper reported that he had rejected a proposal that he should be elected to the Convention.⁽⁴⁾ Other English democrats then in Paris included Mackintosh's old Edinburgh acquaintance, Thomas Christie, James Perry, Robert Merry, and, of course, Thomas Paine. It is probable that Mackintosh was in Paris during the September massacres; this may account for a report of Chauvelin's views:

Some of the old friends of France in the upper classes are abandoning her. The Convention had directed Chauvelin to offer to some of them the right of French citizenship, but not one of them, he complained, had yet answered. Mackintosh, who was among the number, had been heard to say that since August 10 and the September massacres he only wished to forget France. (5)

But in spite of the increasingly Whiggish flavour of his politics, Mackintosh was able to move also in the more radical intellectual

1 George Rous to James Mackintosh 10 July 1792, Morning Chronicle, 17 July 1792.

2 The Oracle, 11 August 1792.

3 There is no mention of Mackintosh in the standard sources: J.G. Alger Englishmen in the French Revolution, London 1889, and 'The British Colony in Paris, 1792-3'. English Historical Review XIII, 1898, 672-694; W.A.L. Seaman 'British Democratic Societies in the Age of the French Revolution'. Unpublished London Ph.D. thesis, 1954, 243ff. There is a single reference in The Journal and Correspondence of William Lord Auckland. With a preface and introduction by the Bishop of Bath and Wells, edited by G. Hogge, 4 vols., London 1860-2, II, 439.

4 The Oracle, 25 September 1792.

5 W.E.H. Lecky A History of England in the Eighteenth Century, 7 vols., London 1918-25, VII, 638.

circles to which the Vindiciae had given him admittance. William Godwin first recorded meeting Mackintosh on 4 March 1792, when he entered in his diary: 'Tea with Holcroft, Barlow, Mackintosh & Stuart'. Such meetings, with Thomas Holcroft, the dramatist, and Joel Barlow, the American author of the Advice to the Privileged Orders, both leading intellectual supporters of the democratic movement, and others, continued; at these meetings, Godwin recalled, the principles of his own work, still in progress, were discussed.⁽¹⁾

In his diary Godwin continued to record his encounters:

April 11	Meet Mackintosh at the Stratford, talk of war, necessity and God.
April 26	Call on B. Hollis, Mackintosh...
June 16	Dine at Freemasons - Erskine, Mackintosh, Thomas, Dunbar...
July 10	Mackintosh calls; talk of Hartley and self-love... (2)

Little is known of Mackintosh during 1793. Certainly he kept up his friendships among these different circles of opinion, while at the same time probably paying more attention to his legal work. He does not seem to have been active in the preparation of the petition of the Friends of the People, which, with their detailed report on the corruption of the parliamentary system, was presented to the Commons on 6 May 1793. But a few months later the trials of Thomas Muir and Thomas Fyshe Palmer in Scotland provided a cause over which the Friends of the People and the radicals could unite.⁽³⁾ Mackintosh

1 F.K. Brown The Life of William Godwin, London 1926, 39. The Life of Thomas Holcroft, written by himself, continued...from his diary notes and other papers by William Hazlitt, and...newly edited with introduction and notes by Eldridge Colby, London, 2 vols., 1925, I, 32.

2 MSS Diary of William Godwin, Abinger Papers, Film MSS 72, Bodleian Library.

3 E. Hughes 'The Scottish Reform Movement and Charles Grey, 1792-4: some fresh correspondence', Scottish Historical Review, XXXV, 1956, 26-41; F. O'Gorman The Whig Party and the French Revolution, 166ff. For the attitude of Godwin and other radicals see: F. Rosen 'Progress and Democracy; William Godwin's Contribution to Political Philosophy'. Unpublished London Ph.D. thesis 1965, 171-4, and Appendix D.

again entered the background of Whig politics; immediately he learned that William Adam was to lead the parliamentary attack of the Foxites on the Whig ministry, he wrote to him:

There seems to be not a day to be lost, both because the appearance of delay will diminish the opinion of earnestness and sincerity & because (as I think you will agree with me) any consolation which these poor men may derive from the discussion is due to them before they finally quit England. Surely even the sudden and clandestine manner in which they were stolen away might be worthy of animadversion.

Any slender assistance which I can give would be at your command in any cause and will be most gladly given in this. It is probably very little but if it spares you the least trouble you have only to name your time and place. (1)

Adam certainly took up the offer; it is clear that there were several consultations, and that Mackintosh also did a certain amount of research on the legal background to the cases. He apparently made some tentative alterations to Adam's finished speech, sent to him for comment.⁽²⁾ In general Adam's legal case rested on the differences between English and Scottish law, and the absence of any crime approximating to sedition in Scotland. The subject was treated learnedly, and with a wealth of historical and legal detail, the product, probably of a number of assistants.⁽³⁾ Mackintosh did not shrink from pressing his services; he urged Adam to consider the motion in the Lords, and particularly to have it brought forward by Lord Guilford, to whom he would gladly give his assistance.⁽⁴⁾

1 Mackintosh to William Adam, 11 February 1794, Blair Adam Papers.

2 Four undated notes from Mackintosh to Adam, 1794 box, Blair Adam Papers.

3 Parliamentary History XXX, 1486-1548.

4 Mackintosh to Adam, Note 4, 1794, Blair Adam papers.

Before the debate on Muir and Palmer's trial, however, the English delegates to the National Convention had been arrested; Maurice Margarot, Joseph Gerrald, Skirving, and four others were seized on 5 December 1793. Gerrald, an old pupil of Dr. Parr's, was a friend of Mackintosh, 'the only man whose superior eloquence even Gerrald could not resist'.⁽¹⁾ And although 'debauchery, political fanaticism, & vulgar associates had by that time defaced his original self', Gerrald stayed in Mackintosh's house for several months in 1793, going from there, against his advice, and that of Dr. Parr to Scotland.⁽²⁾ It is very probable that some of Gerrald's letters of introduction to his advocates, Malcolm Laing and Adam Gillies, came from Mackintosh.⁽³⁾ Gerrald too received the savage sentence of fourteen years transportation from Lord Braxfield; in April 1795 he was taken to London to await shipment to Botany Bay. Mackintosh visited him in Newgate, as did William Godwin, and carried Dr. Parr's messages.⁽⁴⁾ In spite of Parr's later accusations, Mackintosh seems to have been solicitous for Gerrald's welfare; after the trial and sentence, he spent three days consulting legal works in Parr's library, and:

wrote to me a most serious and earnest letter on the necessity of procuring subscriptions for the use of Gerrald; &...when Gerrald had suddenly been ordered on shipboard before he had been supplied with clothes or money for his voyage, Sir James advised & urged

1 C. Redding Fifty Years Recollections, 3 vols, London 1858, II, 145.

2 Mackintosh to Sharpe, 9 December 1806, B.M. Add. MSS. 52451.

3 Pryse Lockhart Gordon, Personal Memoirs, or reminiscences of men and manners, at home and abroad, during the last half century, with occasional sketches of the author's life etc., 2 vols, London 1830, I, 148; The Trial of Joseph Gerrald before the High Court of Justiciary at Edinburgh on 13, 14 March 1794. With an Original Memoir and Notes, London 1835.

4 Johnstone Works of Samuel Parr, I, 433.

me to state the case to Mr. Windham and to request his interposition, that the sailing of the vessel might be delayed till the well-wishers of the unfortunate convict could furnish him with necessities. (1)

Windham did not relent; Gerrald sailed, and soon after his arrival in New South Wales died there. Mackintosh and others did, however, organise a subscription for him, the surplus proceeds of which went to his illegitimate daughter. (2)

Following the series of trials in Scotland came the English treason trials, and in these members of the Friends of the People were deeply involved; Daniel Stuart, Sheridan, Philip Francis, Lord Lauderdale, all came to testify that they had known and respected Thomas Hardy. (3) At Horne Tooke's trial, Godwin recorded meeting a number of his old friends, including Mackintosh; (4) John Thelwall and Thomas Holcroft, old members of his circle had also been arrested, and on the outcome of the trial, the outlook for freedom and speculation in England seemed to depend. Temporarily a community of interest between Whigs and radicals had been found; the Friends of the People were still alive, and under the leadership of Philip Francis had even produced a far more democratic plan of reform. (5) But the animation had gone from the society with the extinction of all hope for their success through Parliament. They might unite with the radicals against the increasingly repressive policies of

1 Declaration signed by Dr. Parr, 3 January 1822, B.M.Add. MSS 52458.

2 For the history of the quarrel between Mackintosh and Parr over the subscription, see W. Derry Dr. Parr 156-7; Mackintosh to Sharpe 9 December 1896, B.M.Add. MSS 52451; Statement of James Perry, 1819, copied 6 January 1822, with copies of Dr. Parr's declaration, and of letters from James Perry to James Mackintosh, of 13 July 1803, and 6 May 1813, B.M.Add. MSS 52182 f.90.

3 Howell State Trials, XXIV, 995, 1100, 1104, 1109.

4 MSS Diary of William Godwin, 16 November 1794. Film MSS 72. Bodleian Library.

5 Plan of a Reform in the Election of the House of Commons adopted by the Society of the Friends of the People, London 1795.

Pitt's ministry, but such a reaction was in essence a passive one. Nevertheless, the growing ideological unity and coherence of this group was helping to ensure the feasibility of party within the constitutional system. And Mackintosh continued to be regarded as one of the chief publicists of the Foxite view.⁽¹⁾

Although Mackintosh was now principally concerned with the problem of trying to establish his own legal practice⁽²⁾ he continued to be better known for his journalistic work, and especially for a series of reviews in the Monthly Review. On 29 July 1795, he wrote to Ralph Griffiths, its publisher:

I have not the least connexion with any literary journal whatever & as my pursuits are entirely legal . and professional I have very little leisure for such a concession, but the little that I have I should be very glad to employ occasionally in contributing to a journal of which I so much respect the principles of conduct as the Monthly Review, on the condition of my not having my name mentioned as a contributor. (3)

His contributions have been reliably identified;⁽⁴⁾ between December 1795 and April 1798 he published reviews of Burke's Letter to a Noble Lord,⁽⁵⁾ Letters on a Regicide Peace,⁽⁶⁾ and on the mass of

1 O'Gorman The Whig Party and the French Revolution, 234-9.

2 Mackintosh was called to the Bar on 14 November 1795. The Black Books of Lincoln's Inn, IV, 241. He asked Adam to act as his security, and to bring some of his Benchers friends on the night his petition was presented 'to ensure against the bad effects of political animosity and prejudice'. Mackintosh to Adam, 9 November 1795, Blair Adam papers. For the earliest reference to Mackintosh in his professional capacity that has been traced, see: Historical Manuscripts Commission. Report on the Manuscripts of J.B. Fortescue preserved at Dropmore, X, 155-7.

3 Mackintosh to Griffiths, 29 July 1795, Bodleian Library Add. MSS c.89 f.216.

4 Nangle The Monthly Review.

5 A Letter to a Noble Lord from the Right Honourable Edmund Burke, on the Attacks made on him and his pension in the House of Lords, early in the present session of Parliament, by the Duke of Bedford and the Earl of Lauderdale, London 1796.

6 Two Letters addressed to a Member of the Present Parliament, on the Proposals for Peace with the Regicide Directory of France. By the Right Honourable Edmund Burke, London 1796.

associated pamphlet literature.⁽¹⁾ He ranged also over more literary topics, including William Roscoe's Life of Lorenzo de' Medici,⁽²⁾ Lord Sheffield's edition of Gibbon's works,⁽³⁾ and Richard Payne Knight's didactic poem on the Progress of Civil Society.⁽⁴⁾ In the light of Mackintosh's later career, there is interest also in the fact that his first review was of an American publication, William Bradford's An Enquiry how far the punishment of Death is necessary in Pennsylvania.⁽⁵⁾ The Philadelphian example was to remain of considerable interest to English criminal law reformers.⁽⁶⁾ Mackintosh saw the work as full of important observations on the nature and punishment of crime, with much relevance to the English situation; although much further research was necessary, the English law was disfigured by the extent to which capital punishment was employed.⁽⁷⁾

On the whole the interest of these reviews lies in the extent to which they reveal the Foxite view of Burke, which is, in many ways, more sympathetic than might have been expected. The title of 'old Whig' was not necessarily a repugnant one; by 1796 it might seem more applicable to Fox than to Burke. Naturally Burke's services

1 Monthly Review XIX, 341-7, 458-9, 444-7; XX, 458-63; XXI, 403-14, 468-71; XXII 195-204.

2 W. Roscoe The Life of Lorenzo de Medici, called the Magnificent, 2 vols, 1795. Reviewed Monthly Review XX, 427-32, XXI, 191-204; XXV, 448-9.

3 Miscellaneous Works of Edmund Gibbon Esq., with Memoirs of his Life and Writings, composed by himself. Illustrated from his letters, with occasional Notes and Narrative, by John Lord Sheffield, 2 vols., 1796, reviewed Monthly Review XX, 77-84, 307-16, 437-51; XXV, 425.

4 R.P. Knight The Progress of Civil Society; A Didactic Poem, London, 1796. Reviewed Monthly Review, XX, 1-6.

5 Philadelphia, 1793, London 1795.

6 L. Radzinowicz, A History of English Criminal Law, 4 vols., London 1948- I, 321.

7 Monthly Review, XVIII, 567-70.

to the country in his early years were emphasized. While Burke himself, under the ideological pressures of the 1790's, was concerned only to disavow and minimise his earlier career, or to picture it as spent in the service of orderly government, the Foxites, following several steps behind, and anxious to establish Whig continuity, recalled his defence of the American colonists, and his part in the campaign for 'economical reform'. Burke declared that his motives had been dictated by a desire to restore the strength and authority of government among the people:

Economy, in my plans, was, as it ought to be, secondary, subordinate, instrumental. I acted on state principles. I found a great disorder in the commonwealth; and, according to the nature of the evil, and of the objects I treated it. On the one hand government, daily growing more invidious from an apparent increase of the means of strength, was every day growing more contemptible by real weakness. Nor was this dissolution confined to government commonly so called. It extended to Parliament; which was losing not a little in its dignity and estimation, by an opinion of its not acting on worthy motives. (1)

He was prepared to grant to the people a part of what they demanded, to prevent a worse evil, 'the dreadful tampering with the body of the constitution itself'. But he did not, as Mackintosh now did for him, claim that his object had been to restore the balance of the constitution against the overmighty executive:

He dwells with great force on the indirect, though most salutary effect of these measures in quieting the minds of the people; while he keeps studiously out of view their most immediate and (if possible) still more important consequences, in securing public liberty. He seems, as it were, ashamed of his exertions for freedom. (2)

1 Burke, Letter to a Noble Lord in Works V, 222.
 2 Monthly Review XIX, 315.

The connection in which Burke's earlier achievements arose was the attack made upon the pension granted to him: an obvious opportunity for a challenge on grounds of inconsistency, which was taken up with particular zeal by two Whig peers, the Duke of Bedford and the Earl of Lauderdale. There was, however, clearly some uneasiness about the grounds of their attack; Mackintosh himself declared it to have been the manner and not the fact of granting the pension which so disturbed the Whig group:

We agree with these noble persons in doubting the propriety, if not the legality, of applying the fund from which this pension is drawn to such a purpose; and we believe that Mr. Burke himself has severely felt (though he has not chosen to express it in this pamphlet) the mortification of receiving, as a clandestine gift, that which he expected to have been voted by Parliament as an offering of national gratitude. (1)

In such a form, Mackintosh surmises, the grant would have been approved even by Fox.

What is really disturbing, however, to Burke's admirers, is the way in which ideological pressures seem to overlay the most fundamental of all Whig tenets: respect for landed property. Burke seems to be moving almost towards a philosophy of meritocracy, when he considers the Duke of Bedford's position:

I really am at a loss to draw any sort of parallel between the public merits of his grace, by which he justifies the grants he holds; and these services of mine, on the favourable construction of which I have obtained what his grace so much disapproves...as to public service, why truly it would not be more ridiculous for me to compare myself in rank, in fortune, in splendid descent, in youth, strength, or figure with the Duke of Bedford, than to make a parallel between his services, and my attempts to be useful to my country. It would not be gross adulation, but uncivil irony, to say that he has any public merit of his own to keep alive the idea of the services by which his vast landed pensions were obtained. My merits, whatever they are, are original and personal; his are derivative. (2)

² Burke Letter to a Noble Lord, in Works V, 231.

³ Ibid, XIX, 314.

In looking at the origins of the Russell wealth, Burke finds much scope for reflection on the merits of Henry VIII, the original founder of the family's fortunes, and on the Mr. Russell of the time. And in spite of Burke's acknowledgment that prescription would nevertheless render Russell lands unassailable, his own eloquence in denouncing the source of such wealth would do more, Mackintosh argued, to inflame passions against property than cooler arguments could possibly counteract:

By exhibiting an odious and detestable picture of the means by which great hereditary fortunes have been raised, it is calculated to change the respect of the multitude for property into disgust: to let loose their enraged passion on that wealth which is the object of their perpetual envy... (1)

In another context, also, Mackintosh defends privilege and wealth, in this case that of the two great universities:

Ought a philosopher really to lament that the rights and privileges of great societies are not, even for the specious object of reformation, subjected to the discretion of the legislature? (2)

An immense distance has evidently been travelled here since the defence of the expropriation of the French clergy in the Vindiciae Gallicae. Privileges have now become 'mounds and barriers' which protect individual liberties; the role of the state is to be considered with great diffidence, and, most of all it is to be regarded within its historical context. William III has already been clearly placed upon that pedestal from which Mackintosh was never to remove him. (3)

1 Monthly Review XIX, 317

2 Ibid XX, 79.

3 Ibid XXI, 308, 413.

Burke's vehemence, however, seemed to derive most of all from the present politics of the two members of the aristocracy who had denounced the grant of his pension. Yet whatever the errors of judgment committed by these peers, Burke's were the greater, in attributing revolutionary principles to members of the English aristocracy; but the Foxites would continue to venerate their image of the early Burke, and to regard him with immense reverence, whatever his own reaction. In his virulent hatred for all French principles, in his Letters on a Regicide Peace, Burke appeared to be abandoning his ancestral standards, in attacking the verdicts of the courts in the recent trials for high treason. The casting of a slur on the impartiality of the courts was the last argument that would ever help to induce a respect for the constitution. Such overriding emphasis on political necessity as Burke's contained 'the germ of tyranny, the embryos of future persecution'; enthusiasm, in whatever cause, had to be restrained by law:

If he abandon himself to ^{the guidance of} any single principle it matters not whether it be a zeal for the glory of God or for the salvation of man; for the quiet of society or for the establishment of liberty; for popery or calvinism; for monarchy or for democracy; it is sure equally to drown the voice of reason, to silence the feelings of nature, to dishonour his own character, and (if he be armed with power) to vex and scourge the human race. (1)

Law alone could be the bulwark of the constitution; to it both executive and people must conform, whatever the political pressures. Aristotle's 'mind without passion' could be found exemplified in the laws of England; this theme Mackintosh was to develop in his Discourse on the Law of Nature and Nations. Enthusiasm entailed, eventually,

1 Ibid, XXI, 323.

2 Ibid, XXI, 434.

dominion over freedom of opinion, 'the most flattering and the most seducing of all the objects of ambition'. The risks that Burke was taking in encouraging the civil power to direct the state of opinion were immense:

There seems to us no symptom more alarming in the present state of our speculations, than the disposition to moot questions on the limits of toleration; by which our horror at intolerance is gradually weakened, and we are but too surely prepared to recur to that horrible practice, so long the pest and the disgrace of the world. (1)

Mackintosh opposed, to Burke's jacobin witch-hunt, law, as an impersonal, if imperfect, embodiment of reason.

The difference between the two becomes clearer through a consideration of Burke's attitude to the 'regicide peace', the proposals for peace with France made in March and April 1796. It was the ideological element of Burke's thinking that merited attack. A distinction had to be made between Burke and Pitt; though Pitt had at first spoken in much the same language as Burke, as success deserted the allies, he came to argue on different premises, seeing Britain as engaged in a purely defensive war against an aggressive foreign power, with whom, under the circumstances, peace was not an impossibility. Yet Pitt, if he saw the problem as purely one of the balance of power, should have acknowledged that there were other resources besides arms:

As a perfect equality prevails in the society and intercourse of nations, no state is bound to degrade herself by submitting to unavowed and clandestine negotiation; but every government had a perfect right to be admitted to that open, avowed, authorized, honourable negotiation which in the practice of nations is employed for the pacific adjustment of their contented claims. To refuse authorized negotiation is to refuse the only negotiation to which a government is bound to submit. (2)

Every attempt should have been made to act according to the law that

1 Ibid XXI, 434.

2 Ibid, XXI, 436.

should prevail among nations.

But Burke's argument was based on a single postulate that had little in common with Pitt's opportunism: 'that the nature of the French government is a just ground of war for its destruction'. The parallel he drew was taken from civil law, the 'law of civil vicinity', by which no innovation is permitted that may be detrimental to a man's neighbour. For 'what in civil society is a ground of action, in politick society is a ground of war', and France constituted within Europe, a plague-spot that could not be ignored:

It is a destruction and decomposition of the whole society; which never can be made of right by any faction, however powerful, nor without terrible consequences to all about it, both in the act and in the example. This pretended Republic is founded in crimes, and exists by wrong and robbery; and wrong and robbery, far from a title to anything, is war with mankind. To be at peace with robbery is to be an accomplice with it. (1)

Mackintosh agreed that man was to a very large extent 'the creature of sympathy and imitation', and that France was therefore a dangerous source of infection; but he took issue with Burke under three heads:

whether a war was a JUST, EFFECTUAL, and SAFE mode of averting the danger with which the French revolution might threaten the established governments of Europe; JUST in its principle, EFFECTUAL for its proposed end, and SAFE from the danger of collateral evil. (2)

In this particular instance it had not been proved that the France of 1791 might not have been susceptible to negotiation; Burke's policy was unjust in that it was founded on the baseless assumption that no approach could possibly have made the French government a fitting neighbour. Besides, to infringe the independence of a nation

1 Burke Letters on a Regicide Peace in Works, V, 310, quoted Monthly Review, XXI, 439.

2 Monthly Review XXI, 450.

was to attack the very pattern of Europe. In Whig eyes, the jeopardising of the principle of national independence was a greater crime than the establishment of a democratic regime:

that great master-principle of public morality, from which all the rules of the law of nations flow, and which they are all framed only to defend; of which the balance of power itself (for which so many wars, in our opinion just, have been carried on) is only a safeguard and an outwork. (1)

This principle might produce the evils of tyranny on the one hand, and democracy on the other; but the abuse of an assumed authority to punish, could bring far greater evils, as Catherine II had demonstrated when she urged as her justification for the partition of Poland the extirpation of Jacobinism there.

The ineffectiveness of the proposed policy was now also proved, and should have been apparent to all. The tools that were to be used to crush the French nation consisted of a group of ambitious and self-interested princes, as Burke himself had admitted, when what was required to crush crimes of such international magnitude was moderation and disinterestedness of a very high degree. It was possible then to demand of Burke, as well as of the framers of utopian commonwealths:

'Who are you that presume to frame laws for men, without taking human passions into^{the} account; to regulate the actions of mankind, without regarding the source and principle of these actions?' (2)

And of course the direction of the war soon changed; from being motivated by the soundest political principles, it came to be a war against the French nation. Such was the fragility of the alliance entered into by Britain.

1 Ibid, XXI, 441.

2 Ibid, XXI, 447.

As for the safety of the war - when the two evils were finally thrown into the balance:

All the wild freaks of popular licentiousness, all the fantastic transformations of government, all the frantic cruelty of anarchical tyranny almost vanish before the terrible idea of gathering the whole civilized world under the iron yoke of military despotism! (1)

This was what the English government hazarded; in the event they had suffered the lesser evil of defeat. But European governments now faced the predictable consequences of their folly.

The importance of the Letters on a Regicide Peace in Burke's thought lies in his realization of the need to command opinion; he appears no longer as an 'old Whig', or as the defender of property and religion, but as the patriot and the nationalist, for whom the 'nation was a moral essence'.⁽²⁾ For Mackintosh, the years from 1791 had seen conscious progress towards the principles of the Reflections; the confusion of Burkean, liberal, and earlier influences was eventually to form the compound characteristic of the politician, historian and philosopher of Lord Grey's party. But Mackintosh stopped short of Burke's passionate politics; he rejected the emotional appeal of the patriot. Even as a conservative Whig, Mackintosh retained a belief in the sanctity and rationality of law among men and nations, a belief which he further elaborated in his Discourse on the Law of Nature and Nations.

1 Ibid, XXI, 449.

2 A. Cobban, Edmund Burke and the Revolt against the Eighteenth Century, London, 1960, 127.

IV THE DISCOURSE ON THE LAW OF NATURE AND NATIONS

The moderation and the deference of Mackintosh's articles in the Monthly Review were not without their effect on Burke himself; his pleasure at the change was evidently made known, and a correspondence followed.⁽¹⁾ In his first overture to Burke, made on 22 December 1796, Mackintosh emphasised his early admiration for Burke:

From the earliest moments of reflection your writings were my chief study and delight. The instruction which they contain~~ed~~ is endeared to me by being entwined and interwoven with the freshest and liveliest feelings of youth. The enthusiasm with which I once embraced it is now ripened into solid conviction by the experience and meditation of more mature age. For a time indeed, seduced by the love of what I thought liberty, I ventured to oppose, without ever ceasing to venerate, that writer who had nourished my understanding, with the most wholesome principles of political wisdom...

Since that time, melancholy experience has undeceived me on many subjects in which I was then the dupe of my own enthusiasm. I cannot say (and you would despise me if I dissembled) that I can even now assent to all your opinions on the present politics of Europe. But I can with truth affirm that I subscribe to your general principles, and am prepared to shed my blood in defence of the laws and constitution of my country. (2)

In his reply Burke handsomely acknowledged the compliments of his convert, praising him as 'the most able advocate' of the cause which he had supported.⁽³⁾ He invited Mackintosh to visit him at Beaconsfield, where he himself was confined by illness, and to make contact with his own close friend Dr. French Laurence. Nevertheless he confided his own reservations to Dr. Laurence:

1 Memoirs I, 87.

2 Burke Correspondence IX, 192-4. This ~~original~~^{draft} is in B.M.Add.MSS 52451.

3 Burke to Mackintosh, 23 December 1796. Correspondence, IX, 194-5.

I forgot to speak to you about Mackintosh's proposed conversion. I suspect, by his letter, that it does not extend beyond the interior politics of this island, but that with regard to France and many other countries he remains as frank a Jacobin as ever. This conversion is ~~nothing~~^{more} at all; but we must nurse up these nothings and think these negatives advantages as we can have them. Such as he is, I shall not be displeased if you bring him down... (1)

For a few days, therefore, after Christmas, 1796, Mackintosh stayed at Beaconsfield. Later he frequently recalled the conversation he had had there.⁽²⁾ The fragments that have been recorded seem to show Burke in his most proselytising mood.⁽³⁾ Mackintosh's recantation has often been attributed entirely to the impact of Burke on this occasion.⁽⁴⁾ It has been suggested, too, that these discussions were of importance not only in the swaying of Mackintosh's political opinions, but also in determining the subject of the Discourse.⁽⁵⁾ This chapter will examine the basis of Mackintosh's 'apostasy'; the effect of the change on his public and professional career will be considered later.

1 Burke to Dr. French Laurence, 25 December 1796. Correspondence, IX, 204-5.

2 (Charles Marsh) The Clubs of London, with anecdotes of their members, sketches of characters, and conversations, 2 vols., London, 1828, II, 273.

3 Ibid, II, 273-7. Cf. also T. Green Extracts from the Diary of a Lover of Literature. Ipswich 1810, 139. Partly printed in Memoirs, I, 91-4.

4 In this most writers follow Hazlitt, The Spirit of the Age (Worlds Classics edition), 153.

5 P. Stanlis, Edmund Burke and the Natural Law, Ann Arbor, 1965, 82. 'Before their meeting Burke's doubts concerning Mackintosh's recantations were centered in the Scotsman's view of international relations. It is therefore significant that the first series of Mackintosh's thirty-nine 'Lincoln's Inn Lectures' which resulted from his discussions with Burke, were called A Discourse on the Law of Nature and Nations'. Stanlis makes it clear that Burke 'was not the sole cause of all these important changes in Mackintosh's political position'; but he does remark that in the Discourse, 'Burke's mighty spirit, like Caesar at Philippi, still walked abroad in triumph after death'.

There are, however, considerable difficulties to be overcome in discussing these lectures. The preliminary discourse was published on 5 February 1799;⁽¹⁾ the first lecture was delivered on 18 February, and the whole course of thirty-nine lectures, given three times a week, lasted until 24th June. They were repeated, apparently with important differences, from January to March 1800.⁽²⁾ The manuscript text of the lectures has not survived; the little knowledge that may be had of their content must come from two fragments reprinted in the Memoirs, and the occasional reference by a contemporary.⁽³⁾ The Discourse is short and naturally general in scope; its aim was merely to sketch the object and plan of the course, and probably also to convince the Benchers of Lincoln's Inn of the safety of the political opinions that would be expressed.⁽⁴⁾ It is therefore a very slight piece of work; concentrated analysis can only be justified to the extent that it may illustrate what Mackintosh called the 'mental meteorology' of the time.

The delivery of the lectures, was, according to Hazlitt, superb; in his prose, at least, they come alive:

1 Morning Post, 5 February 1799.

2 Morning Post, 13 February 1799; ibid, 23 January 1800; Memoirs I, 107, 124-6. For the second course of lectures he spent some time at Cambridge, in the autumn of 1799, for further research. The Works of the Rev. Robert Hall. With a brief memoir and a sketch of his literary character by... Sir James Mackintosh and a sketch of his character by the Rev. John Foster. Edited by O. Gregory, 3 vols, New York, 1832-3, I, 41. (The title-page is misleading; the memoir is not by Mackintosh but by Gregory; the error was corrected in subsequent editions). It was in connection with this second course that Mackintosh wrote to George Moore on 6 January 1800, that he abhorred, abjured, and renounced for ever the French Revolution, that 'conspiracy against God and man'. Memoirs I, 125.

3 In giving the lectures, Mackintosh apparently relied on his memory, and some scanty notes. Works, 161n. The two fragments, on philosophy and the classical system of education, are printed in the Memoirs, I, 11-5, 116-22.

4 This point is more fully discussed in Ch.V, 136-141.

Dazzling others by the brilliancy of his acquirements, dazzled himself by ^{the} admiration they excited, he lost fear as well as prudence: dated everything, carried everything before him. The Modern Philosophy, counter-scarp, outworks, citadel and all, fell without a blow by the whiff and wind of his fell doctrine, as if it had been a pack of cards. The volcano of the French Revolution was seen expiring in its own flames, like a bonfire made of straw; the principles of Reform were scattered in all directions, like chaff before the keen northern blast.....

As to our visionary sceptics and Utopian philosophers they stood no chance with our lecturer... Poor Godwin, who had come, in the bonhomie and candour of his nature, to hear what new light had broken in upon his friend, was obliged to quit the field, and slunk away after an exulting taunt thrown out at 'such fanciful chimeras as a golden mountain or a perfect man.'

Mackintosh had something of the air, much of the dexterity and self-possession, of a political and philosophical juggler; and an eager and admiring audience gaped and greedily swallowed the gilded bait of sophistry, prepared for their credulity and wonder... (1)

It seems clear that Mackintosh juggled skilfully with the elements of his philosophy; the disentangling of the finished result can only be a tentative one. Although there is no doubt that the influence of Burke was very evident in the Discourse, it is relevant also to ask why Adam Ferguson, in his retirement, praised it so highly, and saw Mackintosh as his successor; (2) and what also this philosophical approach to jurisprudence owed to a Scottish background. The classical seventeenth and eighteenth century writers on international law - Grotius, Pufendorf, Wolf, Burlamaqui and Vattel - were equally significant sources for Mackintosh's work. Hazlitt saw these lectures as totally eclectic; (3) yet it seems possible to establish at the

1 The Spirit of the Age, 149-52; Coleridge, on the other hand, was reminded of nothing so much as the progress of a serpent, forever recoiling at his own arguments. The Notebooks of Samuel Taylor Coleridge Edited by Kathleen Coburn, etc., London, 1957- I, 614.

2 See Ch. I, 20.

3 The Spirit of the Age, 151.

least an order of priority in the assembling of a philosophy which by 1799 seemed not only politically, but also intellectually, remarkable for its conservatism. Jeremy Bentham declined the acquaintance of a man who could occupy himself with 'the anatomy and physiology of two chimeras'.⁽¹⁾

The dissection of the law of nature and nations provided an extensive framework for consideration:

Under this comprehensive title are included the rules of morality, as they prescribe the conduct of private men towards each other in all the various relations of human life; as they regulate both the obedience of citizens to the laws, and the authority of the magistrate in framing laws and administering the government; and as they modify the intercourse of independent commonwealths in peace, and prescribing limits to their hostility in time of war. (2)

In approaching this framework, Mackintosh's emphasis on the work of the seventeenth century rationalists, and in particular on the work of Grotius, was noted by many contemporaries.⁽³⁾ He made clear what was for him the fundamental distinction between Grotius and earlier writers. The systematic application of the natural law to the relations existing between nations had enabled the elements of that law to be clarified and given precision to a degree impossible in any treatment of municipal (or constitutional) law. The natural law to which Mackintosh refers is that of Aristotle, Cicero, Aquinas and Hooker; yet with reluctance, Mackintosh suggested that Grotius

1 Bentham to Mackintosh, 1808, The Works of Jeremy Bentham. Published under the supervision of his executor, John Bowring, 11 vols., Edinburgh 1838-43, X, 428.

2 Works I, 343.

3 Samuel Parr to Mackintosh, Memoirs, I, 106; Asiatic Journal New series, XV, 1834, 284; (Marsh) Clubs of London II, 263.

had seen what was lacking in their approach. These philosophers had chosen not so much to neglect:

the sober consideration of the true grounds of morality
in the nature, necessities, and interests of man,

but rather to devote their energies to the nourishing of 'a most natural, a most seemly, a most rational enthusiasm' for virtue. In this they had chosen the better part, but had left to their successors the opportunity of developing the science of ethics.⁽¹⁾

Mackintosh admired Grotius especially for his use of the work of poets, philosophers, orators and historians, in his formulation of the unanimous principles which were accepted by the human race to be fundamental to morality:

The usages and laws of nations, the events of history, the opinions of philosophers, the sentiments of orators and poets, as well as the observations of common life, are, in truth, the materials out of which the science of morality is formed; and those who neglect them are justly chargeable with a vain attempt to philosophise without regard to fact and experience, - the sole foundation of all true philosophy. ⁽²⁾

The achievement of Grotius and his followers in constructing a system of law which was entirely independent of theology, and based on rational and self-evident principles, was implicitly recognised here.⁽³⁾

There were, in the Discourse, three aspects to the law of nature. It was, firstly, an unchanging and invariable rule of conduct, which if violated would bring punishment automatically; such a rule flowed from 'the constitution of things', the 'order of nature'. Secondly there was the law which was grounded ultimately in the promotion of

¹ Works, I, 348.

² Ibid, I, 353-4.

³ A.P. D'Entreves Natural Law, London, 1967 edition, 50-62.

man's happiness, and discovered through the insights of natural reason into man's nature. Lastly, and with most accuracy, natural law could be considered as:

the sacred code, promulgated by the great Legislator of the Universe for the guidance of His creatures to happiness;—guarded and enforced, as our own experience may inform us, by the penal sanctions of shame, of remorse, of infamy, and of misery; and still further enforced by the reasonable expectation of yet more awful penalties... (1)

Such a division was in no way remarkable; the harmony of the self-evident order of nature with the promotion of man's happiness, as long as he remained 'a being of the same nature with which he is at present endowed' had far more in common with the Enlightenment synthesis of science and nature than with Burke's faith in the revelation of the divine order. The great Legislator of the Universe, who might as well be termed beneficent Providence, had little relation to the God of the Trinity. The secular foundations of the Discourse, in spite of its conservatism were well grounded.⁽²⁾

Mackintosh could not, naturally, accept Grotius' method of divining natural law:

His method is inconvenient and unscientific; he has inverted the natural order. That natural order undoubtedly dictates, that we should first search for the original principles of the science in human

1 Works I, 346-7.

2 Compare Locke's implicit threefold division: 'Natural law in his system in Two Treatises was at one and the same time a command of God, a rule of reason, and a law in the very nature of things as they are'. John Locke. Two Treatises of Government. A critical edition, with an introduction and apparatus criticus by Peter Laslett... Second edition Cambridge 1967, 82. The movement away from the purely rational divination of the natural law is reflected here: 'The center of gravity is shifting from the side of a priority to that of empiricism, from the side of reason to that of pure experience. Men are not ruled and united by an abstract command of reason but by the uniformity of their inclinations, instincts, and appetites.' E. Cassirer The Philosophy of the Enlightenment Beacon edition, 1955, 246, and see W.L. Dorn 'The Heavenly City and Historical Writing on the Enlightenment' in R. Rockwood (ed.) Carl Becker's Heavenly City Revisited. Cornell, 1958, 64.

nature; then apply them to the regulation of the conduct of individuals; and lastly employ them for the decision of those difficulties and complicated questions that arise with respect to the intercourse of nations. But Grotius has chosen the reverse of this method. He begins with the consideration of the states of peace and war, and he examines original principles only occasionally and incidentally as they grow out of the questions which he is called upon to decide. (1)

The responsibility for applying the empirical approach to natural and international law rested with Samuel von Pufendorf, who in his treatment of the law of nations in De Jure Naturae et Gentium (1672) restored it to its true position as merely a branch of the overall law. This interpretation involved a considerable oversimplification on Mackintosh's part; Pufendorf's method was a complex and inconsistent blend of Cartesian rationalism and empiricism.⁽²⁾ But certainly his total view of the relative positions of the natural and international laws was more akin to the eighteenth-century emphasis on the uniformity and universality of natural law principles. Pufendorf's influence was particularly widespread during the first half of the eighteenth century; his work was a standard one in universities on the Continent, and its influence had spread to the American colonies. The adaptability of his doctrine was, however, so great that it was employed to defend almost any political position.⁽³⁾

Mackintosh paid considerable attention to the relationship between the law of nations and the law of nature. The development of one from the other was due to a number of interacting factors which by the end of the sixteenth century had brought about a much closer

1 Works, I, 354-5

2 L. Krieger The politics of discretion. Pufendorf and the acceptance of Natural Law, Chicago, 1965, 53-6.

3 Ibid, 262.

unity in Europe; separate states were now bound together much more closely by shared manners, religion, institutions, commerce and language. The necessity for some regulation of this intercourse of nations had become evident by the time that Grotius began his work; and the need for a law of nations played an important part in the growth of a modern natural law. Ernest Barker explained this:

the law of Nature might seem to find its specific and particular application in the one subject of international law. The relation of States, it might be argued, stood in special need of the illumination of Natural Law, because there was so little law of any other sort by which they could be explained or regulated. From this point of view a treatise on the Law of Nations (*droit des gens*) might bear the title, or at any rate the alternative title, of a treatise on the Law of Nature. (1)

- Only in the field of international law was it possible to consider the law of nature as completely free from the constrictions of historic rights, of positive law, and from the overriding claims of sovereign authorities. Although Mackintosh expressed doubts whether the term 'the law of nature and nations' was necessarily the most appropriate - given the degree of confusion regarding the precise meaning of the Latin equivalents - he nevertheless concluded that:

the modern method of considering individual and national morality as the subjects of the same science, seems to be as convenient and reasonable an arrangement as can be adopted.

States could be regarded as 'moral persons'; the injuries and benefits suffered from the anarchy of disorder among nations were comparable to those suffered by individuals. By the same analogy, both interest and duty required that laws should be observed among civilised states;

1 E. Barker, Introduction to O. von Gierke, *Natural Law and the Theory of Society*, 2 vols., Cambridge, 1934, xliv.

and it should have been too obvious to require comment that the application of the laws to both states and individuals should be 'modified and varied by customs, conventions, character, and situation'.⁽¹⁾

But, Mackintosh pointed out, there was a great need for a contemporary survey of the foundations of the law of nature and nations; it had become only too evident that Grotius and Pufendorf had written for a very different age. He passed briefly over such writers as Heineccius and Burlamaqui. Vattel's scope, he argued, was too limited, and even within his narrow range he had introduced certain dangerous principles into his work; this probably refers to Vattel's emphasis on popular sovereignty.⁽²⁾

No writer since the ^{time} ~~age~~ of Grotius, of Pufendorf, and of Wolf, has combined the investigation of the principles of natural law and public law, with a full application of these principles to particular cases; and in these circumstances, I trust, ~~that~~ it will not be deemed extravagant presumption in me to hope that I shall be able to exhibit a view of this science, which shall, at least be more intelligible and attractive to students, than the learned treatises of these celebrated men. (3)

There were, however, other reasons why a fresh consideration of the subject was required; among the advantages of his age listed by Mackintosh were those of a more modest, simple, and intelligible philosophy:

We are thus enabled to discuss with precision, and to explain with clearness the principles of the science of human nature, which are in themselves on a level with the capacity of every man of good sense, and which only appeared to be abstruse from the unprofitable subtleties with which they were loaded, and the barbarous jargon in which they were expressed. (4)

1 Works, I, 344-6.

2 J.W. Gough, The Social Contract, Oxford, 1936, 151.

3 Works, I, 363.

4 Ibid, I, 357.

The new philosophy was the preserve of a succession of disciples; but he does not name these moralists. It seems unlikely that he is referring here to the Scottish 'common sense' school, though one reviewer thought this to be the implication; probably he was using a blanket terminology to cover the whole eighteenth century 'moral sense' field of thought.⁽¹⁾ What is implicit here is both the appeal to the consensus gentium, and Reid's turning from the exclusive few to the good sense of the many. Even more important was the fact that it was then possible to ground the law of nature and nations in a thorough investigation of the principles of human nature.

Here, however, it is possible to take into account a fresh source of information for Mackintosh's discussion of this new basis for the law of nations. Samuel Taylor Coleridge attended the first five lectures of the second course in 1800, and Mackintosh's metaphysics helped to spark off a new and important development in his own philosophical thinking.⁽²⁾ In his account of this he recalled that Mackintosh:

affirmed in the lectures delivered by him at Lincoln's Inn Hall that the law of association as established in the contemporaneity of the original impressions formed the basis of all true psychology; and any ontological or metaphysical ^{is not} contained in such (i.e. empirical) psychology was but a web of abstractions and generalisations. Of this prolific truth, of this great fundamental law, he declared Hobbes to have been the original discoverer, while its full application to the whole intellectual system we owe to David Hartley; who stood in the same relation to Hobbes as Newton to Kepler; the law of association being that to the mind, which gravitation is to matter. (3)

1 The Anti-Jacobin Review and Weekly Examiner II, 278. The British Museum marked copy, P.P. 3596, gives Dr. Bisset as the reviewer. While Mackintosh may have been referring to the ethical doctrines of 'common-sense', there is no indication that he was aware of their epistemological implications i.e. that they were totally opposed to Hartley's associationism.

2 Coburn (ed.) The Notebooks of Samuel Taylor Coleridge I (Notes) para 634n.

3 S.T. Coleridge, Biographia Literaria. Edited by George Watson. Everyman edition, London 1956, '55.

The notes that Coleridge took at these lectures have been preserved and edited; fragmentary though they are, they confirm that Mackintosh began the course of lectures by outlining an epistemology which seemed to follow the associationism of David Hartley, the author of Observations on Man (1749), in all essentials.⁽¹⁾ Hartley held that all ideas (including the ideas of reflection) are derived from sensation, and are gradually transformed by force of association into more complex pleasures and pains; these are divided into seven classes, all functions of the primary senses, and progressively, by a process of association, carry man towards the highest of these, the moral sense. The theory does rest on the assumption of the existence of 'vibratiuncles' or miniature vibrations in the brain, by which changes in ideas, corresponding to sensations received are affected; Hartley did believe, however, that the mechanism of association might be maintained even if the theory of vibrations had to be abandoned. The aim of the Hartleian pattern was to confound the oralists of self-interest. Hartley found:

'a proof from the doctrine of association that there is, and must be, such a thing as pure disinterested benevolence; also a just account of the ~~origin~~^{origin} and ~~cause~~^{nature} of it.' (2)

In his first lecture Mackintosh dealt with the sensational psychology; in the second he moved on to the analysis of pleasures and pains. In dealing with the very foundations of Hartley's theory, it would seem from Coleridge's notes that the lecturer followed Hartley's argument closely.⁽³⁾ Coleridge suggests another possible source:

1 Coburn (ed.) The Notebooks of Samuel Taylor Coleridge I, para. 634.

2 L. Stephen History of English Thought in the Eighteenth Century 2 vols., London 1927, II, 63-9: B. Willey 'David Hartley and Nature's Education' in The Eighteenth Century Background, 1967, Peregrine edition.

3 Coburn Notebooks of Samuel Taylor Coleridge I para. 634.

such a wretched patchwork of plagiarism from Condillac - of contradictions and blunders in matters of fact, I never heard from any man's mouth before. (1)

Hartley's philosophy was in many respects very similar to that of Condillac, although his view of necessity and his religious optimism caused him to reject the materialist implications that Condillac carried to their conclusion. For this reason, and from later evidence, it is more likely that Mackintosh leant on Hartley than on Condillac.⁽²⁾

The defined object of the first six lectures of the course was 'the general philosophy of human nature and morality'; reviewers did not hesitate to dub this investigation 'pneumatology', a term generally defined by reference to the psychological theories of the school of Scottish moralists.⁽³⁾ The philosophy of the mind was a necessary preliminary to the wider areas of ethical and legal philosophy, since to this the source of our knowledge of the principles of natural law had to be related. In combating the theorists of self-interest, it was unnecessary to fall back on a strictly rational basis for the knowledge of natural law; emphasis on the general nature of human beings involved a combination of 'the impartial judgment, the natural feelings and the embodied experience of mankind'.

In relying on the Hartleian notion of moral sense, Mackintosh was faced, as Hartley had been, with the problem of reconciling a

1 Coleridge to Thomas Poole, 13 February 1801, E.L. Griggs The Collected Letters of Samuel Taylor Coleridge, 4 vols., Oxford, 1956-1959, II, 675.

2 Mackintosh to Richard Sharpe, 31 May 1802. 'I have ~~long been~~ ^{been long} desirous to fix the charge of plagiarism on Condillac...when you consider that Condillac is the acknowledged master in metaphysics of France and Italy, and is now opposed to Kant as the great improver of the Lockean philosophy - it is surely worthwhile to detect his thefts from our old master whom I consider sauf erreur as the best of Metaphysicians. B.M.Adc.MSS. 52451 f.40.

3 The Anti-Jacobin Review II, 278. The Oxford English Dictionary gives Reid, Beattie and Stewart as authorities for the meaning of 'pneumatology'; cf. also G. Bryson Man and Society, 32.

mechanistic psychology and the fixed rules of morality:

it shall be my object, in this preliminary, but most important, part of the course, to lay the foundations of morality so deeply in human nature, as to satisfy the coldest inquirer; and at the same time, to vindicate the paramount authority of the rules of our duty at all times, and in all places, over all opinions of interest and ^{regulations} of benefit, so extensively, so universally, and so inviolably, as may well justify the grandest and the most ~~apparently~~ extravagant effusions of moral enthusiasm.

The feelings, passions, sentiments, affections - all these terms were used - had come to take the place of reason as a guide to the natural law:

An action to be completely virtuous, must accord with moral rules, and must flow from our natural feelings and affections, moderated, matured and improved into steady habits of right conduct. (1)

In his discussion of the duties of private life, Mackintosh found that the highest praise that could be given to the Christian religion concerned the spirit rather than the letter of morality:

The appropriate praise of this religion is not so much that it has taught new duties, as that it breathes a milder and more benevolent spirit over the whole extent of morals. (2)

Reason, then, played a lesser role than feeling and custom in the process of divining the natural law. Morality of course involved a weighting of the relative claims of the conscience, and of utility; but although utility was the foundation of all rules, and a criterion by which custom and feeling could be tested, it could never be an immediate motive to action. These points seem identical to those raised in the discussion of utility in the Vindiciae Gallicae - and the same conclusion is reached; the fixed and unchanging rules of morality could not be varied by any temporary considerations of utility.

1 Works, I, 365.

2 Ibid, I, 367.

The pattern of Mackintosh's lectures followed closely the plan on which Scottish universities based their curricula. Once the principles of the human mind had been established, and the criteria of morality examined, it was possible to move on to the duties of private life, to political liberties, rights, and duties, the municipal law, the law of nations, and the diplomatic conventions of Europe. Moral philosophy, politics, and law, were all part of a synthesised approach to the study of society; professional and advanced studies, such as law, or medicine, were based on a philosophical approach to the problems of the subject.⁽¹⁾

Scottish lawyers and moral philosophers had, since Lord Stair, been strongly influenced by the rationalist mainstream of natural law theory; Grotius and Pufendorf were taught in the universities, and close contacts were maintained with Utrecht and Leiden. By the second half of the eighteenth century, however, Scottish thinkers - Kames, Smith, Millar - had begun to consider the relationship between law and society, and to move from the notion of law as reason to the idea of law as originating in the circumstances of society. They too had praised Grotius, yet finally rejected his work.⁽²⁾ In 1707 a Chair of Public Law and the Law of Nature and Nations was founded at Edinburgh; the occupants did not generally take their duties

1 G.E. Davie, The Democratic Intellect. Scotland and her Universities in the nineteenth century, Edinburgh, 1961, 22-4. Davie draws an interesting parallel between John Millar and William Cullen... 'while the influence of (Millar) ran towards looking for a general theory of law which would serve as a middle terminus between the actual legal statutes and the principles of morals, so too the chief interest of Cullen was in finding a ~~general~~ theory of disease which would connect up with speculation about the nature of life and its relations to mind and matter.'

2 P. Stein 'Law and Society in Eighteenth-Century Scottish Thought' in Scotland in the Age of Improvement, 148-168; S.G. Kermack 'Jurisprudence and Philosophy of Law' in An Introductory Survey of the Sources and Literature of Scots Law, Stair Society, Edinburgh, 1936, 439-41; A. Macfie 'The Scottish Tradition in Economic Thought' Scottish Journal of Political Economy II, 1955, 86-92.

seriously, but the ablest of them, Allan Maconochie, Professor from 1779 to 1796, lectured while Mackintosh was at Edinburgh; his programme, which clearly reflects these developments, has been described:

He traces the rise of political institutions from the natural characters and situation of the human species; follows their progress through the rude periods of society; and treats of their history and merits, as exhibited in the principal nations of ancient and modern times, which he examines separately, classing them according to those general causes to which he attributes the principal varieties of the forms, genius and revolutions of governments. In this manner he endeavours to construct the science of the spirit of laws as a connected view of what may be called the natural history of man as a political agent; and he accordingly concludes his course with treating of the general principles of municipal law, political economy, and the law of nations. (1)

The contrast between the Scottish system of embedding specialised disciplines in the foundations of moral philosophy, and the English tradition of advanced specialisation - in classics, mathematics, medicine, or law - was very distinct. There is little doubt which of these plans Mackintosh followed; his choice of subject, the organisation of his material, and his approach to philosophical jurisprudence are all typical of his background. It was not only the new developments in moral philosophy that, for him, as for Smith and Millar, made so necessary a new survey of the law of nature and nations. New developments in other fields of knowledge had also provided the jurist with fresh scope for the improvement of his science. No longer was man confined to knowledge of the ancient civilisation of two great peoples; it was possible for him to expand his views on human nature enormously:

1 H. Arnot The History of Edinburgh from the earliest accounts, to the year 1780. With an appendix...To which is added a sketch of the Improvements of the City from 1780 to 1816, Edinburgh 1816, 305. Quoted in W. Wilson 'The Law of Nations' in Introductory Survey of the Sources and Literature of Scots Law, 415-7.

We can make ^{human} society pass in review before our mind, from the brutal and helpless barbarism of Terra del Fuego and the mild and voluptuous savages of Otaheite, to the tame, but ancient and immovable civilisation of China, which bestows its ^{own} arts on every successive race of conquerors, - to the meek and servile natives of Hindostan, who preserve their ingenuity, their skill and their science, through a long series of ages, under the yoke of foreign tyrants, - and to the gross and incorrigible rudeness of the Ottomans, incapable of improvement, and extinguishing the remains of civilisation among their unhappy subjects, once the most ingenious nations of the earth. (1)

Already the fascination that the work of Sir William Jones exerted was acknowledged. (2) This kind of survey of primitive peoples was of course common to much eighteenth century writing; yet the Scottish school were remarkable for their anticipation of what later became known as the comparative method, or the recognition of similarities between the practices and beliefs of contemporary primitive peoples, and those recorded in the past history of civilisation. Common as such a recognition of similarities might be:

There is, however, a difference between pointing out similarities merely in order to illuminate the less by the more familiar, or even in order to throw new light on the latter, and using them as a basis for systematic classification, with the object of constructing a hypothetical sequence illustrating the development of civilisation. It was this that the Scots attempted. (3)

Mackintosh's Discourse is quoted by modern authorities as an interesting example of this approach:

We can examine almost every imaginable variety in the character, manners, opinions, feelings, prejudices, and institutions of mankind, into which they can be thrown, either by the rudeness of barbarism, or by the capricious corruptions of refinement, or by those innumerable combinations of circumstances, which, both

1 Works, I, 358.

2 Ibid, I, 358n.

3 J.W. Burrow *Evolution and Society*, 11.

in these opposite conditions, and in all the intermediate stages between, influence or direct the course of human affairs. History, if I may be allowed the expression, is now a vast museum, in which specimens of every variety of human nature may be studied. From these great accessions to knowledge, lawgivers, and statesmen, but, above all, oralists and political philosophers may reap the most important instructions. (1)

Unfortunately it is not known how far Mackintosh expanded on these ideas in his lectures. But an example of the hypothetical sequence towards which the method was moving might be his reconstruction of the history of the law of nations, as it had evolved from the regulations governing the intercourse of savage tribes, to those of the ancient republics and the Asiatic empires, finally to the law of nations as it was known in Christendom. Moreover he believed that a similar method might be applied to the history of jurisprudence, and to the development - but not the origin - of government:

...the manner in which a family expands into a tribe, and tribes coalesce into a nation, - in which public justice is gradually grafted on private revenge and temporary submission ripened into habitual obedience; form a most important and extensive subject of inquiry, which comprehends all the improvements of mankind in police, in judicature, and in legislation. (2)

Both applications are very clear illustrations of the indissoluble connection seen to exist between the degree of civilisation of a people, and its laws. Yet the lesson to be drawn from these uses of the comparative method, and from the study of the bewildering variety of the customs and traditions of primitive and civilised peoples, was still that there existed, underlying all differences, the few clear and universal principles of society. But, surprisingly,

1 Works, I, 358-9. Quoted in W. Lehmann John Millar of Glasgow,

2. Quoted from Lehmann by Burrow op.cit. 11.

2 Works, I, 371-2.

Mackintosh was prepared to criticise Montesquieu for imposing too artificial a regularity on his map of societies of the world:

we are compelled to own that he exaggerates the influence of climate,- that he ascribes too much to the foresight and forming skill of legislators, and far too little to time and circumstances, in the growth of political constitutions, that the substantial character and essential differences of governments are often lost and confounded in his technical language and arrangement,- that he often bends the free and irregular outline of nature to the imposing but fallacious regularity of system... (1)

Nevertheless he acknowledged that De l'esprit des lois was a most striking example of the uses of a survey of the different kinds of human nature.⁽²⁾ The general consent of mankind in the first principles of morality and the endless variety existing in their application was a basic element in the philosophy of the Discourse; even the lessons presented by man's new experience of political life could be utilised. The example of recent events had given practical instruction on the nature of almost every form of government, and of revolution. As a result:

Men's wits, sharpened by their passions, have penetrated to the bottom of almost all political questions. (3)

The fundamental principles of morality had for the first time been doubted and exposed to criticism.

And this is where one may reconsider Mackintosh's new-found conservatism and his admiration for Burke. It is clear that the

¹ Works, I, 360.

² See F.T.H. Fletcher Montesquieu in English Politics (1750-1800), London 1939; in spite of its title, this book discusses fully the influence of Montesquieu on the thinkers of the Scottish Enlightenment. Fletcher sees Mackintosh as the last significant instance of 'a spiritual descendant of Montesquieu' in England. 33. See also C.P. Courtney Montesquieu and Burke, Oxford 1963.

³ Works, I, 361.

standpoint of the Discourse does owe a great deal to the modes of thought of the Scottish Enlightenment; in spite of Mackintosh's conversion, his conception of the law of nature remained an essentially secular one, still, as in the Vindiciae Gallicae, owing more to the eighteenth century deification of nature than to the Christian authors whom he quotes. Yet Burke's own position with regard to the law of nature is a much debated one, and it may be fair, given the admitted extent of Burke's own borrowings from the various intellectual trends that surrounded him, to consider the place of a declared admirer in relation to this whole debate. It will be evident that there are certain elements of political thinking that are common^{to} the three main sources cited for the Discourse. There is the necessary preconception that 'man is by nature a social animal', and that government is a natural and desirable institution, as Ferguson saw it.⁽¹⁾ Grotius founded society on an ineradicable instinct of human nature, a 'social appetite', with the state as the guardian of the law of nature.⁽²⁾ The notion of the organic community was central to Burke's political thought. By the end of the eighteenth century, rejection of the older contractarian school of writers, of the view of society as an artifact, was fairly common; yet many writers failed to put forward an alternative. Blackstone, for example, dismissed the state of nature hypothesis, but retained the main implications of the theory of a social contract, that is, that only the weakness and imperfections of mankind maintained authority within society.⁽³⁾

1 ^Bryson Man and Society 36-41.

2 Cassirer The Philosophy of the Enlightenment, 257-8.

3 Gough The Social Contract, 177.

Mackintosh made it clear in his discussion of political authority that for him government was based upon law and not on the natural rights of individuals:

The duties which arise from this relation I shall endeavour to establish, not on supposed compacts, which are altogether chimerical, which must be admitted to be false in fact, and which, if they are to be considered as fictions, will be found to serve no purpose of just reasoning, and to be equally the foundations of a system of universal despotism in Hobbes, and of universal anarchy in Rousseau; but on the solid basis of general convenience. Men cannot subsist without society and mutual aid; they can neither maintain social intercourse nor receive aid from each other without the protection of government; and they cannot enjoy that protection without submitting to the restraints which a just government imposes.

The duties of citizen and magistrate had to be reciprocal; the duty of obedience on the part of a citizen and that of protection on the part of a magistrate were part of the moral law. Nowhere did Mackintosh hint at the possibility that the individual might enjoy any form of natural right. He quotes Aristotle:

The introduction to the first book of Aristotle's politics is the best demonstration of the necessity of political society to the well-being, and indeed to the very being, of man, with which I am acquainted. (1)

Again, if the brief references to the meaning of liberty in the Discourse are considered, it will be seen that Mackintosh has followed Burke to the extent that liberty, in the abstract, and outside government, appears a meaningless claim. But it is also true that, much later, on reading through Ferguson's Principles of Moral and Political Philosophy, Mackintosh was to write:

1 Works, I, 370-1.

His idea of liberty is the same which I gave in my 'Discourse on the Law of Nature', that it was 'security against wrong'; I was not aware that I had been in substance anticipated. (1)

After giving this definition, Mackintosh had expanded on it:

Liberty is therefore the object of all government. Men are more free under every government, even the most imperfect, than they would be if it were possible for them to exist without any government at all: they are more secure from wrong, more undisturbed in the exercise of their natural powers, and therefore more free, even in the most obvious and grossest sense of the word, than if they were altogether unprotected against injury from each other. (2)

This is clearly a 'negative concept of liberty'; it is assumed that men's actions must be limited by law, but at the same time that there ought to exist a certain area of personal freedom which should not be violated.⁽³⁾ The function of government was to provide the conditions for the realisation of man's potentialities, rather than to participate in any way in the development of these faculties:

A free constitution of government and a good constitution of government are therefore different expressions for the same idea. (4)

This emphasis seems very different from that of Burke; without departing from the principle that liberty can exist only within a governed society, Mackintosh has nevertheless made the attempt to define the term - an attempt which Fox, for one, could not accept⁽⁵⁾ -

1 Memoirs, II, 244. See Ferguson Principles of Moral and Political Science, II, 465.

2 Works, I, 372.

3 I. Berlin, Two Concepts of Liberty, Oxford, 1958, 9.

4 Ibid, I, 372.

5 Fox 'declared he would set his hand to every part of the 'Preliminary Discourse on the Law of Nature and Nations', except the account of Liberty, a subject which he considered as surely practical, and incapable of strict definition', T. Green Extracts from the Diary of a Lover of Literature, 139. Quoted Memoirs, I, 91.

and he has specified that liberty should be the object of government, rather than merely the by-product of historic forces.

Mackintosh drew a distinction, which, he later claimed, Ferguson did not see, between civil and political liberty, between liberty from injustice on the part of fellow-citizens, and on the part of the magistrate. There were few governments which could be cited as examples of political liberty; they arose only through the gradual exertions of wisdom and virtue on the basis of a long succession of favourable circumstances. It was probable that in many countries there was some kind of check on the power of the authorities:

Religious institutions, favourite prejudices, national manners, have in different countries, with unequal degrees of force, checked or mitigated the exercise of supreme power. The privileges of a powerful nobility, of opulent mercantile communities, of great judicial corporations, have in some monarchies approached more near to a control on the sovereign.

Similar means had been used to temper the exercise of power in aristocracy and democracy alike. But the natural tendency of any form of government that was vested in the hands of one man, or group, or class, would inevitably be towards despotism. The only solution was a complex government:

The best security which human wisdom can devise, seems to be the distribution of political authority among different individuals and bodies, with separate interests, and separate characters, corresponding to the variety of classes of which civil society is composed... Such governments are, with justice, peculiarly and emphatically called 'free'.

He planned in the course of lectures to examine those governments of ancient and modern times which had been noted for their freedom.⁽¹⁾ On the whole it was unlikely that any absolutely unbalanced government

¹ Works, I, 373.

ever existed, except in the imagination of political theorists. Simplicity in government was therefore firmly rejected; any attempt to impose a new scheme of authority should be regarded as ignorant, tyrannical and presumptuous. Mackintosh attacked the very notion of system in politics as vehemently as he had once defended it. The only tolerable kind of theory was that which took for its most fundamental principle 'distrust in itself, and deference for practical prudence'. Aristotle and Bacon were the exemplars of political wisdom.⁽¹⁾

The complex state on the other hand, had a constitution comprising:

'the body of those written and unwritten fundamental laws which regulate the most important rights of the higher magistrates and the most essential privileges of the subject.

There were so e privileges which were so intrinsic to the welfare of the state that they were guarded by the same fundamental laws which secured the authority of the magistrate. These fundamental laws of the constitution:

must in all countries arise out of the character and situation of ~~the~~ people: they must grow with its progress, be adapted to its peculiarities, change with its changes, and be incorporated with its habits. (2)

They represented the basic principles of the law of nature in its final and most complex application.

The constitution of England, which alone among the European nations, was able to preserve and develop the ancient Gothic principles of liberty, had never been examined by one who combined legal knowledge and the philosophical spirit:

1 Ibid, I, 378-9.

2 Ibid, I, 375.

I shall attempt to exhibit this most complicated machine, as our history and our laws show it in action; and not as some celebrated writers have most imperfectly represented it, who have torn out a few of its more simple springs, and putting them together, miscall them the British Constitution. (1)

Unfortunately Mackintosh makes little further reference to the constitution in the Discourse; but Crabb Robinson noted attending a lecture on that subject in June 1799:

I have also been greatly amused by hearing one of Mackintosh's lectures ^{in 1799} on the British Constitution. Though his praise of the British Constitution was extravagant, he was far from uniformly favourable to the cause of government. His favourite notion concerning the Constitution is, that it is the most truly democratic of any that has ever existed. He defines a real democracy to be a government where the opinion of the body of the people influences and governs the State, whatever the nominal legislature be. And he boldly asserts that a more formal democracy would lessen the real democracy, because it is the nature of all mobs and public assemblies to be under the secret guidance of factious demagogues; and that the people in such states never act, precisely because they are the direct actors, and have a power nominally given them which they cannot exercise. He urged the common argument in favour of Monarchy, that it took from the ambitious the motives to be factious and breed dissension in order to procure the principal stations; and that the King, sharing the honour of victory and the affection of the soldiery with the general was not likely to become a military tyrant. He defended Coalitions, Parties and moderation towards ex-ministers, was eloquent against the French, but likewise hinted at the danger to public liberty from not watching the Government. On the whole I was much pleased with the lecture, which was well adapted to secure popularity; as to his politics they are certainly moderate, nor do I know that he has gone an inch beyond pure Whiggism. (2)

This fragment seems to be an echo of Burke, who was certainly not

1 Ibid, I, 377.

2 The Diary, Reminiscences, and Correspondence of H.C. Robinson...
Selected and edited by T. Sadler, 2 vols., London, 1872, I, 33.

unaware of the power of public opinion - the real will of the people, the respectable and the propertied, directed through constitutional channels, as opposed to the general will.⁽¹⁾

Mackintosh seems then to have followed Burke's conception of the nature of government, as an assembly of interests and classes, each acting as a check on the others, and on the power of government, and together expressing the real will of the people. Crabb Robinson was right; Mackintosh was here expounding the quintessence of Old Whiggism, as expressed by Burke, and given a rejuvenating shot by a political outlook derived, fundamentally, from another source. Since Mackintosh remained one of the leading protagonists of the Old Whig view until 1832, the continuity is an important one.⁽²⁾

To return to the difficult problem of Burke's standpoint on the law of nature: while at times he certainly represented himself as the defender of this historic cause, it is difficult to reconcile a view of Burke as the saviour of its mutilated standards with his more consistent championship of prejudice, prescription, and theological utilitarianism.⁽³⁾ The principal problem which is relevant here is that of prescription; how were Burke's historic standards to be reconciled with adherence to the natural law? The question was similar to that posed by the new relativism of the Scottish 'Scientific

1 J.R. Pole Political Representation in England and the Origins of the American Republic, London, 1966, 486-90.

2 H.J. Hanham (ed.) The Nineteenth Century Constitution 1815-1914. Documents and commentary, Cambridge 1969, 3.

3 The attempt is made in Stanlis Burke and the Natural Law *passim*; L. Strauss Natural Right and History, Chicago 1953, 294-323; R. Kirk 'Burke and Natural Rights' Review of Politics XIII, 1951, 441-456. A modified version emerges from B.T. Wilkins The Problem of Burke's Political Philosophy, Oxford 1968. *passim*.

Whigs' in their first approaches to social science.⁽¹⁾ It was a dilemma which Mackintosh could not resolve. To produce a consistent interpretation of Burke's political theory, one authority has postulated two possible levels of discourse, a lower one on which positive law and pragmatic justification might operate, and the higher one of natural law and ultimate moral standards. Prejudices and historic rights which might be acknowledged on the lower level had nevertheless to be just and in accordance with the natural law.⁽²⁾ What Mackintosh tried to put forward - coinciding with this interpretation - was the explicit claim that the constitutional or municipal branch of the law of nations embodied the same truths as the law of nature, although it varied according to circumstances and situation.⁽³⁾ Any established government was better than none - but did it therefore embody natural justice? Indirectly Mackintosh seems to deny this; the laws of nature might in an unjust state be implicit in the laws that guard civil liberty, but not in the maintenance of tyrannical authority. Yet the argument is hedged around; political liberty could only grow after a long period in which the character and customs of a people, together with judicious reforms, had developed a tradition of freedom. Here again is the same difficulty, and here also the two levels of discourse; but it does appear that on the lower level only those established authorities which acted in accordance with the

¹ Stein 'Law and Society in Eighteenth Century Scottish Thought' Scotland in the Age of Improvement, 164-5.

² Wilkins, *op.cit.*, 235-6, and Pt. 3 *passim*.

³ Stanlis *op.cit.*, 97.

natural law could be justified on these grounds. Unjust governments were judged to have the germ of the matter in them only to the extent that they granted subjects some form of security; their institutions were to be judged in the two lights of justice and security. Yet nowhere is there in the Discourse any approbation for resistance to an unjust government, and without this, in the last resort, such a combination of criteria is meaningless. 'There is little occasion for affirming that an unjust law is not a law if one believes that nearly all laws are just'.⁽¹⁾ Mackintosh was in fact hopelessly entangled between the new standards of history and the old ones of nature; his wavering between the traditional and the criticist approach to law, in a very faint echo of Burke, is only too apparent.⁽²⁾

However, there is a thread which runs through Mackintosh's discussion of historic standards, which can hardly be related to Burke's position: his view of the progress of human society. This may perhaps be illuminated with reference to Mackintosh's quarrel with William Godwin. The Discourse, and even more, the lectures, were widely taken to be an attack on the author of Political Justice, an attack the more striking since the two men were known to be personal friends, although the friendship had lately languished, for reasons of 'distance, accident, occupation, and laziness'.⁽³⁾ Godwin reacted rapidly to reading the Discourse, in a letter to Mackintosh which he later published in part.⁽⁴⁾ He had not, he

1 D.O. Thomas Review of Wilkins, Political Studies XVI, 1968, 110-12.

2 J.F. Davidson 'Natural Law and International Law in Edmund Burke', Review of Politics XXI, 1959, 483-494.

3 Mackintosh to Godwin, 30 January 1799. C. Kegan Paul William Godwin: his friends and contemporaries, 2 vols, London, 1876. I, 329-31.

4 Godwin to Mackintosh, 27 July 1799. Partly printed in W. Godwin, Thoughts occasioned by the perusal of Dr. Parr's Sermon, preached at Christ Church, April 15, 1800, Being a Reply to the Attacks of Dr. Parr, Mr Mackintosh, the author of an Essay on Population, and others, London, 1801, 13. The original letter is in B.M. add. MSS 52451.

declared, previously realised the extent to which his friend's opinions had changed; he demanded to know to whom the epithets 'superficial and most mischievous socialists', 'mooters of fatal controversies', 'shallow metaphysicians', 'sophists swelled with insolent conceit', and others were intended to apply; and he defended the reputations of Rousseau, Turgot, and Condorcet, whom he took to be among those attacked. Mackintosh replied promptly and courteously to this letter, denying Godwin's charges, and, in particular, that he had ever intended to impugn the motives of Turgot, Rousseau, or Condorcet; but he insisted that it was always relevant 'in moral and practical disputes' to take into consideration the natural consequences of the doctrines being examined. (1) Godwin made the obvious rejoinder to this:

The friends of science will always be reluctant to discourage men from the enumeration or support of principles they apprehend to be true.

And he hoped that the controversy might continue, as between friends, without rancour. (2) But this letter was followed by no corresponding softening of language in the lectures. Godwin attended several of these; there is a record of his presence at a lecture on gratitude:

I shall never forget the effect produced on his (Mackintosh's) auditors, in spite of the most inharmonious of all accents, and the most ungraceful of all manners when he animadverted on that part of Godwin's book, which decried the moral beauty and obligation of gratitude... At this lecture, Godwin himself was present and stood the fire with most unflinching fortitude. (3)

And he would have continued to attend:

1 Mackintosh to Godwin, 30 January 1799. Kegan Paul *op.cit.* I, 329-31.

2 Godwin to Mackintosh, 3 February 1799. An unsigned copy of this letter is in the Abinger MSS, Film MSS 75. Internal evidence clearly shows its direction to Mackintosh; the copy is undated, but in his diary (Film MSS 72), Godwin recorded a visit to Mackintosh on 3 February 1799. It is quoted by Rosen, 'Progress and Democracy: William Godwin's Contribution to Political Philosophy', 195.

3 Asiatic Journal, New Series, XV, 1834, 285.

had it not been that the expression which I believed to be personal to the speaker, and which I saw were understood as personal to me by many of the hearers, were so continual and had so little moderation, as made it utterly improper for me to be the silent spectator and witness of an attack, to which from its nature and circumstance I could not reply.

He was given a faithful report of succeeding lectures, and the virulence of these, it seemed, increased; it was not particular expressions that so angered him, but rather the spirit of the whole course of lectures, worthy of a Dominican or an Inquisitor.

Three times a week did Mr. Mackintosh address an audience of one hundred persons, dissecting and mangling my sentiments and reasonings as he pleased, without the possibility of my in any way checking his career. (1)

It was these lectures, then, rather than the Discourse which made the break between the two men complete; Mackintosh attacked Godwin personally as the leading advocate of the 'New Philosophy'. There is no doubt that Godwin was justified in his complaints. Mackintosh later admitted that he had been in the wrong in attacking Godwin so violently, and other witnesses, too, testified to the tone of his arguments. (2) The exchange of letters illustrates the differences between the two over the nature of political debate; Godwin conceived that it should be possible for a small class of cultivated scholars to carry on calm and rational debate over disputed topics, without necessarily taking into account the consequences of their speculations. Mackintosh thought this distinction an impossible one; the truth or falsity of these doctrines could never be the only criteria, since

1 Godwin, Thoughts occasioned by the perusal of Dr Parr's Spital Sermon..., 16-20.

2 Memoirs, I, 134-5.

their effect on the stability and welfare of the state had also to be considered. In other words, abstract speculation could not be divorced from its historical and political context.⁽¹⁾

Behind this exchange, therefore, the diametrical opposition of their political principles was clearly exposed. As Mackintosh said, they were both philosophers of utility; where then did the difference lie? Mackintosh recognised utility as a test of fundamental law, but not as a motive for action; Godwin abominated the very idea of law, and saw the only justifiable motive for action as the greatest happiness of all, as signified by a rational and universal benevolence. Godwin too had affinities with the 'moral sense' school of thinkers; yet the direction of his work was towards the progressive abolition of government through the exercise of enlightened intelligence. Progress was not a question of the unconscious development of physical and intellectual resources, but of man's determination to move towards a perfect society. Godwin regarded Mackintosh, with Malthus and Parr, as 'one of the adversaries of the progressive nature of man', whose doctrines were increasingly gaining ground:

Discussion is no longer regarded as one of the great sources of benefit to man. The principle and practice of toleration among us hang by a very slender thread. All declamation, and all licensed argument, must be on one side. The questions now proposed to a reasoner, are not, Do you argue well? Are the principles on which your theory rests sound? Do your premises sufficiently sustain and make out your conclusions? But, Are your arguments cast in the mould of Aristotle, Bacon, and Hooker, of Grotius, Puffendorf, and Vattel? (2)

1 F. Rosen 'Progress and Democracy: William Godwin's Contribution to Political Philosophy', 193.

2 Godwin Thoughts occasioned by the perusal of Dr. Parr's Spital Sermon... 77.

The obscurantism that could overwhelm the appeal to history certainly deserved some disparagement. Mackintosh's excesses in his controversy with Godwin are only too well illustrated in a fragment that has survived, in which he declares it is his aim to call in philosophy for the defence of experience and tradition against a body of writers who had as their primary object the destruction of all the most revered institutions and customs of man. He withheld the prospect of 'a little heaven on earth':

Of this supposed state of future perfection (though it be utterly irreconcilable with reason, with experience, or with analogy), the masters of this sect speak as confidently, as if it were one of the best authenticated events in history. It is proposed as an object of pursuit and attainment. It is said to be useful to have such a model of a perfect society before our eyes, though we can never reach it. It is said at least to be one of the harmless speculations of benevolent visionaries. But this is not true. The tendency of such a system (I impute no evil intentions to its promulgators) is to make the whole present order of human life appear so loathsome and hideous, that there is nothing in it to justify either warm affection or zealous exertion or even serious pursuit. In seeking an unattainable perfection, it tears up by the roots every principle which leads to the substantial and practicable improvement of mankind. It thwarts its own purpose and tends to replunge men into depravity and barbarism. (1)

Mackintosh saw progress as a complex historical problem, most clearly illuminated by the study of past and present societies. In some paragraphs evidently aimed at Godwin, he pointed out how society had grown up around the progress of the institutions of property and marriage:

It will not only be curious, but useful, to trace the history of property from the first loose and transient occupancy of the savage, through all the modifications which it has at different times received, to that comprehensive, ^{subtle} and anxiously minute code of property which is the last ^{result} ~~stage~~ of the most refined civilisation.

On these bulwarks of morality society had been built:

They constitute, preserve, and improve society. Upon their gradual improvement depends the progressive civilisation of mankind; on them rests the whole order of civil life. (1)

His view of the reconstruction of the hypothetical sequence of historical development, of the manner in which 'a family expands into a tribe and tribes coalesce into a nation', of the transition from barbarism to civilisation, have already been traced. History served both a didactic and an anthropological purpose. This awareness of the slow and unconscious, yet inexorable, nature of man's progress is present throughout the Discourse. It may stem from admiration for Burke's perception of the pluralistic nature of human development, or from Montesquieu: but it is most likely that it sprang from the experience of a Scottish education. Such a view was compatible with the negative ideal of liberty put forward; and conservative and unoriginal as the result was, it did not necessarily imply a commitment to Burkean pessimism.

The veering of Mackintosh's opinions must necessarily be regarded with a certain amount of suspicion; the inconsistencies of the Discourse are evident. Nevertheless it is possible to suggest that here is an interesting fusion of two currents of thought: here there are elements of both the 'old Whig' and the 'scientific Whig', of the Burkean attitude to government, and the scientific idea of progress. In relation to Mackintosh's future role in the Whig party, this combination was by no means insignificant.

1 Works, I, 368-9.

V TOWARDS SUCCESS

Did Mackintosh change his opinions with a cold clear predetermination formed at the moment, to make £5000 a year by that change? I neither know nor care. Probably not. But this I know, that to be thought a man of consequence by his contemporaries, to exercise power, to excite admiration & to make a fortune are his habitual objects of wish and pursuit - A flash of lightning has turned at once the polarity of the compass needle & so perhaps now & then, but as rarely, a violent motive may revolutionize a man's professions - but more frequently his honesty dies away from evening into twilight & from twilight to night - he turns hypocrite so gradually & by such tiny little atoms, that by the time he has arrived at a given (point) he forgets his own hypocrisy in his conversion. (1)

Coleridge was a prejudiced observer of Mackintosh's rise; but his view was common, and to a certain extent justified. Mackintosh did turn towards the source of power, and, as will be seen, with some success; but he did not, in the struggle for success, sycophantically abandon all principle. His political opinions between 1791 and 1799 moved from one point of extremism to another, and yet kept within the guidelines and assumptions established by his background and education.

It is true that Mackintosh had ample motive for his conversion. While it is unlikely that he had ever received financial aid in the form of a retainer or salary from any of the Whig leaders, he had, for several years, been borrowing large sums from the Earl of Lauderdale.⁽²⁾ After being called to the Bar in 1795, the young lawyer did not

1 Coburn (ed.) The Notebooks of Samuel Taylor Coleridge, I, para. 947. Written c.1801, this passage was later reprinted with Mackintosh's name left blank, in Coleridge's Omniana, edited by R. Southey, London 1812, 2 vols., I, 228-31.

2 See above Ch. I, 27.

enjoy immediate success in his profession, although his expenses were rising, and he occasionally entertained the leaders of the Foxite Whigs.⁽¹⁾ In April 1797 Catherine Mackintosh died, leaving three small daughters, Mary, Maitland, and Catherine.⁽²⁾ A year later, Mackintosh married Catherine Allen, one of a large family from Cresselly in Pembrokeshire. Two of her sisters were married to John and Josiah Wedgwood of the great Potteries family of Etruria; a third was, much later, to marry J.C.L. de Sismondi.⁽³⁾ The Wedgwoods and the Allens were naturally very close; Mackintosh was marrying into a world known for its political hospitality and for its genuine concern with the patronage of the arts. The Wedgwoods' patronage of Coleridge and Godwin is well known; occasionally they also extended their liberality to Mackintosh, on a much more moderate scale.⁽⁴⁾

Although Mackintosh continued to write for the Morning Post, and occasionally for other publications, the extreme conservatism of the legal profession did seem a very real barrier in the way of any other employment.⁽⁵⁾ He had already encountered the hostility

1 R. Phillips, *Public Characters of 1806*, 240.

2 Born in 1789, 1792, and 1795.

3 For the family see Emma Darwin *A Century of Family Letters*, edited by Henrietta Litchfield. Privately printed, Cambridge, 1904, I, Ch.1, and for their intellectual progeny N. Annan 'The Intellectual Aristocracy' in J.H. Plumb (ed.) *Studies in Social History*, London 1955.

4 Josiah Wedgwood to Mackintosh, 27 October 1799. Keele University MSS. 9857-11; Tom Wedgwood to Mackintosh, 11 December 1801. R.B. Litchfield *Tom Wedgwood the first photographer*, London 1903, 157-8.

5 The *Morning Post* was making Stuart's fortune at this time, but Mackintosh's contribution to its success was even less than Coleridge's. *Gentleman's Magazine New Series*, X, 1838, 126. Mackintosh was also contributing to the *Monthly Review* and the *British Critic*. *Memoirs*, I, 168; *A Memoir of the Life and Writings of the Late William Taylor of Norwich... Containing his correspondence with Robert Southey and original letters from Sir Walter Scott and other eminent literary men*. Compiled and edited by J.W. Robberds, 2 vols., London 1843, I, 388.

When the Regulations on the admission of students and the call to the Bar, common to all the Inns of Court, were formally set out in 1834, the Bench explicitly set out their right to refuse any applicant who had written for a salary in the newspaper. *Black Books of Lincoln's Inn*, IV, Preface, ii-iii

of political opponents, before his call to the Bar, and in his candidature for the Crown and Rolls debating society, a small group of barristers and M.P.'s; he would have been rejected had not James Scarlett and Spencer Percival exerted all their influence.⁽¹⁾ The idea of a course of lectures on the law of nature and nations was first formulated in 1797, and the project laid before William Adam:

I need not tell you that such a course would comprehend the general principles of Morality, of Politics & of Law as well as the rights and duties of nations in their connexion and correspondence with each other - I should subjoin such a general view of the constitution & law of England as might be sufficient for general students & useful to beginners in the study of Law to which I should consider the whole as an introduction. If this were combined with another course on English Law these two courses would form a sort of Law University which I cannot help thinking would be very useful in London. (2)

Mackintosh asked Adam for help in persuading the Benchers of Lincoln's Inn to lend their Hall; he had already been offered a number of pupils, and hoped to begin the course early in 1798. However it took some time for the lectures to materialise; Mackintosh did not take any decisive steps until late in that year, though the delay may have been due to much discouragement. He recorded his progress in letters to Adam; his petition to the Benchers of Lincoln's Inn was drawn up on 26 November, but the consent of the Council is not registered until 30 January 1799, although several other meetings had been held in that time.⁽³⁾ Evidently, between these two dates

1 Memoirs II, 281-2; D. Gray Spencer Percival: the evangelical Prime Minister (1762-1812), Manchester 1963, 119-20, where the incident is wrongly dated.

2 Mackintos' to William Adam, 19 November 1797, Blair Adam Papers. A course of lectures on English and municipal law had been delivered in the Hall of Lincoln's Inn in 1796 by a barrister of that society. M. Nolan A Syllabus of a Course of Lectures, intended to be delivered in pursuance of an order of the Hon. Society of Lincoln's Inn, in their Hall, London 1796.

3 Black Books of Lincoln's Inn, IV, 76-7.

much canvassing had been necessary:

As there has been some opposition or at least some hesitation about the matter I feel a much stronger interest in it than I did before, not merely or chiefly for the sake of this particular plan, though I am pledged to a considerable number of pupils, but for the sake of my character, which might suffer from so respectable a body having refused to me what they had granted to another barrister. If I were not too obscure a man to have my political Principles known beyond the circle of my private Friends nobody would suspect me of circulating opinions unfit to be taught under the sanction of lawyers & men acquainted with and attached to the constitution of their country. (1)

Even Adam's persuasion seems to have been insufficient, and George Canning was asked to exert his influence to overcome the scruples of some of the more conservative Benchers; he himself seems to have regarded the course with some favour, in spite of Mackintosh's pillorying in the Anti-Jacobin only a year before:

I have only to express my most sincere hope that the obstacles thrown in the way of Mr. Mackintosh's plan will not be found of such a nature as to deprive the public of the benefit of the Lectures, and Mr. Mackintosh's friends of the pleasure which they must derive from the credit that he cannot fail to do himself in the delivery of them. (2)

Adam found Addington sympathetic, but unwilling to intervene; the Lord Chancellor, Lord Loughborough, was, however, favourably inclined, and so also was Pitt, after reading the printed Discourse.⁽³⁾

1 Mackintosh to William Adam, 11 December 1798, Blair Adam papers.

2 The Anti-Jacobin, or Weekly Examiner, 4 December 1797; Canning to Adam, 17 January 1799. Blair Adam papers. William Wilberforce noted the source of the objections. 'Attorney General (Sir John Scott), Abbot, Legge, all strongly condemning Mackintosh's giving lectures in Loncoln's Inn Hall'. R.I. and S. Wilberforce The Life of William Wilberforce, 5 vols., London 1838, II, 328.

3 Addington to Adam, 17 January 1799, Blair Adam papers; Loughborough to Canning, 31 December 1798, Canning Papers Box 66a, Leeds Central Library. The opinions of Pitt and Loughborough are quoted in the Memoirs, I, 104-5. It seems likely, since a number of people seem to have read the Discourse before the date of publication, that Mackintosh distributed advance copies in order to win over those opposed.

Permission was then granted for Mackintosh to use the Hall of Lincoln's Inn, on 30 January, only two weeks before the lectures were due to begin.

There is no doubt that the course of lectures was an enormous success. About a hundred and fifty attended, including six peers and a dozen members of Parliament - though none from the Whig party, except Lord Holland. Ministerial supporters were far more in evidence; Lord Minto, Sylvester Douglas, and Canning were said to attend regularly.⁽¹⁾ The favourable reaction was immediate. Henry Dundas wrote to Adam:

I have read Mr. McIntosh's discourse with infinite satisfaction. He treats his subject in the only rational way in which such subjects can be treated, and relieves them from all the absurd nonsense which the ignorance of some, the scepticism of others, and the refinements of still more, have thrown upon a subject which in its own nature rests upon a foundation, simple and plain, and which can only be traced by considering Man as compounded of such feelings, dispositions, and passions as God placed in him whereas it has been the fancy of most writers on those subjects to substitute in the room of such habitual guides the Theories and chimaras of their own imagination.

It may perhaps answer for one season to bring forward his subject in the mode that now proposes, but I am sure that, both for the sake of his own reputation, and for the benefit of the public, he will soon be under the necessity of giving his system to the world in a different form. I have not the pleasure of his acquaintance, but I trust you will be so good as to introduce me to him and the best way of doing it will be for you & him to take a family dinner in the country or in Town as best suits your convenience. (2)

It is not known whether the dinner took place; Mackintosh did stay at Dundas' house in Scotland for a couple of nights in September

¹ Mackintosh to George Moore, 25 April 1799, Memoirs, I, 108.

² Henry Dundas to William Adam, 7 January 1799, Blair Adam papers.

1801, and seems to have favourably impressed his host.⁽¹⁾ As important, and rather more surprising, was the impact made by the Discourse on Lord Wellesley, then engaged in securing British dominion in India, one of whose most cherished projects was the foundation of a college at Fort William, in India, for the education of the servants of the East India Company. In a letter to Dundas, then President of the Board of Control, Wellesley raised the question of the teaching there:

The Professorships of English Law, Ethics, Civil Jurisprudence, & the Law of Nations might be advantageously united. This Professorship, with its necessary reference to the Mahometan & Hindoo ~~codes~~ & to the Laws enacted by the Governor-General in Council, would form the fundamental part of the course of study applicable to the administration of these governments. It is therefore, the most important of all the Professorships in my College; and I am anxious to fill it respectably and efficiently. The name of Mr. Mackintosh, must be familiar to you. He was a follower of the false principles of the French Revolution; but I understand that the natural vigour of his own mind & the experience of the last three or four years have restored him to a just sense of ^{the} sound principles of Government. I have seen a plan of lectures which he had commenced in London, drawn with a most correct and able hand. If his conversion ^{is sincere} ~~be sincere~~, ^{I am inclined to think that} he would suit my purposes & those of ~~this~~ ^{the} Empire admirably in this Professorship & accordingly (if you should concur with me) I request you to offer it to him, on the terms stated in the Memorandum. If he should accept embark him as soon as you can. Whether he finds me or Lord Clive or anybody else here, I will ensure him an honourable reception. (2)

Unfortunately the proposal to establish a College at Fort William was one of the principal issues of dispute between those who supported

1 Memoirs, I, 170; Mackintosh to Adam, September 1801, Blair Adam Papers; Henry Dundas to David Scott, 6 November 1802. The Correspondence of David Scott Director and Chairman of the East India Company, relating to the East India, edited by C.H. Philips, 2 vols., London 1951, Camden 3rd series, LXXXVI, II, 408.

2 Wellesley to Dundas, Fort William, 18 August 1800. Two views of British India: the private correspondence of Mr. Dundas and Lord Wellesley, 1798-1801. Edited with an introduction by Edward Ingram, Bath, 1970, 283.

rival conceptions of empire; and since the finances of the East India Company were in poor condition, the College seemed an obvious candidate for economy.⁽¹⁾ Negotiations continued for some time, with Lord Dartmouth replacing Dundas as President of the Board of Control; Mackintosh wished to have freedom to practise at the Bar in India as well as to teach. This was not acceptable to the Board, which did, however, offer him a salary of £5000 a year instead of the original £3000 - an extra £500 for each of the extra professorships.⁽²⁾ By the end of 1801 the decision against the College had been taken, and the position was no longer available. However, Addington's government seem to have felt some kind of responsibility for finding Mackintosh a place. He was offered judgeships in the West Indies, of after the establishment/Vice-Admiralty Courts there, at a very similar salary; he had hopes of the Recordship of Madras in 1802, and also of the Advocate-Generalship of Bengal, both of which went to other candidates.⁽³⁾ The final offer of the Recordship of Bombay may therefore be taken as a direct consequence of the favourable notice that Mackintosh received after his course of lectures.

The advantage of a highly paid position in India or elsewhere was that it would enable Mackintosh to pay off his debts, live frugally, and save some capital, and also, perhaps, emerge with a sizeable pension. In the years from 1800 to 1803, although his professional reputation

1 C.H. Philips The East India Company 1784-1834, Manchester 1940, 125-30.

2 Mackintosh to Adam, 29 April, 28 May, 27 June, 6, 7, and 12 July 1801, Blair Adam papers; David Scott to Lord Lewisham, 17 July 1801. The Correspondence of David Scott ed. Philips, II, 326; Historical Manuscripts Commission, Fifteenth Report Appendix, Part I. The Manuscripts of the Earl of Dartmouth, III, 1896, 278. These papers are now in the Staffordshire Record Office, but those dealing with this appointment seem to have been lost; Mackintosh to Robert Greene, 27 April 1801, B.M. Add. MSS 52451.

3 Memoirs I, 187; Mackintosh to Adam, 4 August 1801 and April, 27 May and 10 June 1802. Blair Adam papers.

had grown, and he was no longer short of business, he was increasingly involved in society, and, as usual, found that this income did not meet his expenditure. Professionally he was active on the Norfolk circuit;⁽¹⁾ Basil Montagu, the friend of Wordsworth, gives an account of a circuit on which he accompanied Mackintosh, whose eloquence had much effect although it seemed at times to overwhelm the local assize courts.⁽²⁾ He was also in demand in cases concerning constitutional law, notably for contested elections after the 1802 elections, and international law.⁽³⁾ His legal talents were therefore fully recognised, and in his last year at the Bar he was said to be making over £1200.⁽⁴⁾

Socially too Mackintosh was making progress. He made his first appearance at Holland House after his reputation had been established by the lectures, on 25 May 1799.⁽⁵⁾ About the same time he founded the 'King of Clubs' dining society, which most of the leading Whigs were to join, and which remained in existence until 1824.⁽⁶⁾ There

1 Memoirs, I, 145-7.

2 Ibid, I, 149-66.

3 Ibid, I, 144. Mackintosh to Adam, July 1802, and 20 August 1802, Blair Adam papers. There is an account of one election scrutiny in which he was concerned, for the county of Norfolk. A Narrative and Authentic Report of the Proceedings at the Election for Knights of the Shire for the County of Norfolk, from its commencement on July 12th to the close of the scrutiny on the 28th August 1802, Norwich 1802.

Mackintosh found the practice of international law rather different from the theory. He confessed to Francis Horner that 'he knew almost nothing of it (the practical substance of international law)...though he had previously studied it with some attention, and lectured on it'. Francis Horner to James Reddie, 14 November 1803, Memoirs and Correspondence of Francis Horner. V.P. Edited by Leonard Horner, 2 vols, London 1853, I, 238.

4 Memoirs, I, 187.

5 B.M.Add MSS 51950. Holland House dinnerbooks.

6 B.M. Add. MSS. 37337. Register Book of the King of Clubs. The first meeting was held on 27 April, 1799. See also Life and Letters of Thomas Campbell. Edited by W. Beattie, 3 vols., London 1849, I, 383.

are many references to Mackintosh's success in society at this time, and to the brilliancy of his conversation; to Sydney Smith he seemed quite outstanding among 'Scotch philosophers' for his experience of life and his 'profound moral speculations'.⁽¹⁾ Among the many acquaintances made by Mackintosh at this time was Samuel Taylor Coleridge; his antipathy towards Mackintosh dated from their first meeting:

Mr. (afterwards Sir James) Mackintosh was on a visit ~~at~~ Cote House, Bristol, the residence of Mr. Wedgwood, passing the Christmas holidays in 1797. A large part of the Wedgwoods and Allens were assembled, among whom were Coleridge and Mackintosh. Coleridge was not a mere holiday visitor: he had been an inmate for some time, and had so riveted, by his discourse the attention of the gentlemen, particularly of Mr. Thomas Wedgwood, an infirm bachelor; he had so prevented all general conversation that several of the party wished him out of the house. I believe the Wedgwoods were at the same time very liberal to him with their purses; he was said to be - his family, at least, starving and that he had no ~~other~~ means of employment. Mackintosh wrote to me soliciting for him an engagement to write for the Morning Post pieces of poetry and such trifles. I agreed; and ~~settled~~ ^{settled} him at a small salary. Mackintosh at the instance of some of the inmates, attacked Coleridge on all subjects, politics, poetry, religion, ethics &c. Mackintosh was by far the most dexterous disputer. Coleridge overwhelmed listeners, in as he said, with reference to Madame de Stael, a monologue; but at sharp cut and thrust fencing by a master like Mackintosh, he was speedily confused, and subdued. He felt himself lowered in the eyes of the Wedgwoods; a salary, though small as it was, was provided for him; and Mackintosh drove him out of the house, an offence which Coleridge never forgave. (2)

1 Sydney Smith to Francis Jeffrey, June 1801. Nowell C. Smith (ed.) The Letters of Sydney Smith, 2 vols., Oxford 1953, I, 63-4. See also J.W. Robberds, Memoir of William Taylor I, 297; Memoirs and Correspondence of Francis Horner, I, 258-9.

2 Daniel Stuart, Letter to the Gentleman's Magazine, N.S., IX, May 1838, 485-6; cf. also Francis Jeffrey's account in his review of the Memoirs, Edinburgh Review, LXII, October 1835, 243. Mackintosh's letter to Coleridge, on 17 November 1797, offering him a small salary, is printed in Griggs Collected Letters of Samuel Taylor Coleridge I, 359n.

Daniel Stuart also made it clear that Coleridge hardly wrote enough over the next few years to justify his salary;⁽¹⁾ but the poet's resentment was still fierce enough for him to send Stuart an unmistakable lampoon on Mackintosh, which was, of course, not printed.⁽²⁾ In 1798, however, Hazlitt recorded Coleridge's calmer verdict on Mackintosh, as:

a clever, scholastic man - a master of the topics - or, as the ready warehouseman of letters, who knew exactly where to lay his hands on what he wanted, though the goods were not his own. (3)

Coleridge's feelings were aggravated by Mackintosh's treatment of Godwin;⁽⁴⁾ and although in 1801 Mackintosh stayed with Coleridge for a few days at Keswick, their incompatibility was never resolved.⁽⁵⁾

However, they were still brought together by their common benefactors, the Wedgwood family. Mackintosh had for some time been pursuing his interest in metaphysics; Samuel Rogers recalled:

When I lived in the Temple, Mackintosh and Richard Sharpe used to come to my chambers and stay there for hours talking metaphysics. One day they were so intent on their '~~first~~ cause', 'spirit' and 'Matter' that they were unconscious of my having left them, paid a visit, and returned. (6)

1 Gentleman's Magazine, N.S. IX, 1838, 486-91.

2 The poem 'Two Round Spaces on a Tombstone' was finally printed in the Morning Post on 4 December 1800, with the stanza beginning 'This fellow from Aberdeen hither did skip' omitted. J.D. Campbell (ed.) The Poetical Works of Samuel Taylor Coleridge, London 1925, 157.

3 W. Hazlitt 'My First Acquaintance with Poets' in G. Keynes (ed.)- Selected Essays of William Hazlitt, London 1948, 506-7.

4 Coleridge to Godwin, 21 May 1800 and 23 June 1801 'that Geman's Lectures & Conversations are but the Steam of an Excrement & truly animal- ular must those Souls be to whom this can form a cloud that hides from them the face of Sun or Star. He is a thing that must make itself known to all noses, sooner or later; but some men's olfactories are quicker than others.- You for instance smelt at him and found him out. I & Wordsworth winded him at a distance! Griggs Collected Letters of Samuel Taylor Coleridge, I, 588, and II, 737

5 For Coleridge's description of this visit, and his impressions of Mackintosh, see his letter to Thomas Poole, 21 October 1801. Griggs Collected Letters of Samuel Taylor Coleridge, II, 770; for Mrs. Mackintosh's account of two days spent with Coleridge, see 'Tour in Scotland by C. & J. Mackintosh, 1802' (wrongly dated), Barlaston MSS, 32631-59, Wedgwood Museum, Barlaston, Stoke-on-Trent.

6 Recollections of the Table-Talk of Samuel Rogers, first collected by the Rev. Alexander Dyce. Edited, with an introduction by Morchard Bishop. London, 1952, 140-1.

Some kind of society was formed for this purpose by Sharpe and Mackintosh, at which papers on philosophical subjects were read and discussed.⁽¹⁾ Mackintosh carried the interest a little further in his collaboration with Thomas Wedgwood, the invalid brother of Josiah and John Wedgwood, and a closer friend of Coleridge.⁽²⁾ Thomas Wedgwood believed that he had made important philosophical discoveries; Josiah Wedgwood wrote:

When Tom was here he enjoyed a high satisfaction in explaining to Mackintosh the result of his metaphysical speculations, and in finding ~~Mackintosh~~ concur with him in his opinions, after discussing the points, though not at first disposed to do so. He has also convinced Sharpe, as far as he has opened the business to him. The subjects he has cleared are no less than Time, Space and Motion; and Mackintosh and Sharpe think a metaphysical revolution likely to follow. It has given him great pleasure to be confirmed in the result of several years meditation. (3)

Thomas Wedgwood was too old to continue the work; his relatives suggested that Mackintosh should piece together the fragments that had been written, and Coleridge contribute a preface, and a sketch of the history of metaphysical opinion.⁽⁴⁾ Mackintosh delayed so long that the manuscripts went with him to India; after Thomas Wedgwood's death in 1805, the procrastination of both Mackintosh and Coleridge,

1 Sharpe to Rogers, 10 November 1797. Rogers Papers, University College, London.

2 For his life, see R.B. Litchfield Tom Wedgwood, the first photographer.

3 Mrs. M.E. Sandford Thomas Poole and his Friends, 2 vols., London 1888, II, 28.

4 Tom Wedgwood to Mackintosh, 11 December 1801. Litchfield op.cit. 157-8; R. Southey to William Taylor, 6 February 1802 and 14 February 1803. J.W. Robberds Memoir of William Taylor, 397 and 454.

so incongruously linked in this project, became a subject for some family recrimination.⁽¹⁾ Only in 1817 was a short paper 'An Enquiry into the Origin of our notion of distance', an essay in the Berkleian theory of vision, published; it seems probable that Mackintosh was the author of this.⁽²⁾ Coleridge thought that in its main principles, though not in its proofs, Wedgwood's work had something in common with 'some philosophers of another country'; but he had clearly been anticipated by Kant.⁽³⁾

Mackintosh called on Coleridge on the way back from Scotland; there, in September 1801, he had met a new Edinburgh generation. He stayed with Sydney Smith, and seen his old friend Adam Gillies. For the first time he met John Leyden⁽⁴⁾ and Francis Horner, by whom Mackintosh and his wife were especially impressed; but he did not, on this visit, come across Francis Jeffrey. After spending some time in Edinburgh, the Mackintoshes stayed with the Adams at Blair

1 In the early stages, apparently, Dr. Parr was also to take a hand. Johnstone Works of Samuel Parr, VIII, 572. The subsequent history of the project was one of continual delay. Mackintosh to Thomas Wedgwood 26 December 1803. Litchfield op.cit. 158-9, and also 207-8. Josiah Wedgwood sent Mackintosh materials for a brief life of his brother, to be included. Eliza Meteyard. A Group of Englishmen, being records of the younger Wedgwoods and their friends; embracing the history of the Discovery of Photography... London 1871, 316. There are many references to the work in Mackintosh's correspondence and journals; he does not seem to have started on it until 1809. Journal, 12 August 1809, B.M. Add. MSS 52451, and Mackintosh to Sharpe, 11 October 1809, B.M. Add. MSS 52451.

2 'An Enquiry into the origin of our notion of distance, drawn up from notes left by the late Thomas Wedgwood Esq.' Quarterly Journal of Literature, Science and Arts, III, 1817, 1-12. Reprinted in Meteyard op.cit. 395-406.

3 Coleridge to Thomas Poole, 13 February 1801, and to Josiah Wedgwood 25 June 1807. Griggs Collected Letters of Samuel Taylor Coleridge, II, 675, and III, 20.

4 Dr. John Leyden (1775-1811), a member of the Edinburgh circle which included William Erskine, Francis Horner, Thomas Campbell, and Thomas Brown, the philosopher. On Leyden, see J. Reith The Life of Dr. John Leyden, Galashiels, 1923, and D.N.B. By 1801 Leyden already knew several oriental languages; Mackintosh was urged by George Ellis and Richard Heber, to take Leyden, in whom Sir Walter Scott was interested, out to the College at Fort William. Scott to George Ellis, 10 June 1801, The Letters of Sir Walter Scott. Edited by H.J.C. Grierson..12 vols., London 1932-37, I, 116; Alexander Fraser-Tytler to Mackintosh, 25 June 1801, N.L.S. MSS 971 f.12. For Leyden's career and interests in India, see below, Ch. VI, 205.

Adam, and with the Dundasses, returning via Glasgow.⁽¹⁾ The friendships formed on that short visit were to be very important. It is probable that Mackintosh first met William Erskine, his future secretary and son-in-law. Perhaps, besides Leyden, he also met the Sanskrit pioneer, Alexander Hamilton, a member of the Edinburgh circle at that time, and also a contributor to the Monthly Review.⁽²⁾ Most important, six months later, Sydney Smith appealed for help in the launching of a new journal:

You will do me and my associates a very great favour if you will point out to me what bookseller in London is likely to be most active in pushing forward the publication...

What do you think of the form of publication, and of the probability of sale? We wish to weigh the matter well, and if your literary experience can suggest anything for the improvement of the plan, we shall be extremely thankful for your counsel.

Mackintosh was invited to contribute to the first number of the Edinburgh Review.⁽³⁾ Although he did not take up this offer, he kept in touch with the Edinburgh group, largely through Francis Horner, who came to London early in 1802, and was introduced by Mackintosh to the King of Clubs, and to Whig society.⁽⁴⁾ The two men spent much time together during 1802 and 1803; Mackintosh encouraged James Reddie, an Edinburgh lawyer and close friend of Horner's, to set about writing the definitive treatise on the law of nations that was so urgently needed.⁽⁵⁾ Horner, for whom Mackintosh seemed to

1 'Tour in Scotland by C. & J. Mackintosh', Barlaston MSS.

2 Rosane Rocher Alexander Hamilton (1762-1824). A Chapter in the Early History of Sanskrit Philology, American Oriental Series, 51, New Haven, Connecticut, 1968, 11-33; idem 'New Data for the biography of the Orientalist Alexander Hamilton', Journal of the American Oriental Society, 90, 1970, 426-448.

3 Sydney Smith to Mackintosh, 13 January 1802, Barlaston MSS, 31795. Published by A.S. Bell 'An Unpublished Letter on the Edinburgh Review', Times Literary Supplement, 9 April, 1970.

4 Memoirs and Correspondence of Francis Horner, I, 180, 183.

5 Horner to James Reddie, 21 July and 14 November 1803. Ibid, I, 222-5, and 237-9.

embody the desired amalgam of Scottish 'philosophical' wisdom, and metropolitan polish, had by 1804 come to regard him as his intellectual master.⁽¹⁾

In the following year, the Peace of Amiens enabled Mackintosh both to display his talents in Paris, and to make contact with liberally minded French philosophers and politicians. His visit was a short one; he spent four weeks in Paris in the October of that year, and according to Creevey, outshone all other visitors there:

..the great lion of all upon the subject of Paris is Mackintosh. He has really seen most entertaining things and people. He, too, dined with ministers and has held a long consultation with the Consul upon the Norman and English laws; but his means of living with the active people of France has far exceeded that of any other English...

Every wreck of the different parties in France for the last ten years that is now to be found in Paris, Mackintosh met and lived familiarly with - La Fayette, [illegible], Jeanbon St. André, Barthelemy, Camille Jourdan, Abbé Morel~~le~~, Fouché, Boissy d'Anglas &c &c. Tallien no one visits of his countrymen; his conversations with Mackintosh, if one had not his authority, surpass belief. (2)

In writing to Dugald Stewart, Mackintosh stressed rather the intellectual pleasures that he had enjoyed in Paris; he had met the Abbé Morellet,

1 Horner to William Erskine, 4 February 1804, *Ibid*, I, 244.

2 The Creevey Papers, A Selection from the correspondence and diaries of the late Thomas Creevey M.P. Born 1768 - Died 1838. Edited by the Right Hon. Sir Herbert Maxwell Bart. 2 vols., London 1903, I, 4-7. See also a very similar account in Life of William Wilberforce III, 102. In his diary for 28 May 1802, Wilberforce entered Mackintosh's description of a few days spent as a guest of Tallien's.

and the 'most amiable men in France', Camille Jordan, and de Gérando.⁽¹⁾ The pleasure seems to have been mutual; although communication became very difficult once hostilities had been resumed, Mackintosh did correspond with both Jordan and de Gérando, and a few of their letters have survived. In January 1803, Jordan spoke of a letter he had received from Mackintosh as:

ce souvenir d'amitié d'un homme qui nous a fait dans un temps si court une impression si profonde que nous ne cessons de nous rappeler avec affection et admiration.

He sympathised with Mackintosh in his task of defeating the extremism of Peltier, although he approved of such royalist sentiments; he sent news of Parisian friends, including Mme Récamier, whose salon Mackintosh must have frequented.⁽²⁾ Jordan was one of Mme de Stael's closest allies in her opposition to Napoleon; but she was exiled to Coppet during the autumn of 1802, looking with much regret towards the enlivened society of Paris.⁽³⁾ Mackintosh offered, through Jordan, to translate her recently published novel Delphine.⁽⁴⁾ De Gérando, too, was pleased to maintain contact, and when a letter from Mackintosh reached him from Bombay, escaping the censorship of

1 Mackintosh to Dugald Stewart, 14 December, 1802. Memoirs, I, 177-80.

Camille Jordan (1771-1821) Born in Lyon, and associated with the counter-revolutionary insurrection there in 1793. As an emigre in England he mixed with members of the Whig opposition; on returning to France as a member of the Council of 500, he again fled after denouncing the Directory, to join the circle of Mme de Stael in opposition to Napoleon. He returned to politics in 1816 as a 'doctrinaire'. C.A. de Sainte-Beuve 'Camille Jordan and Madame de Stael'. Nouveaux Lundis, 13 vols, Paris, 1869-78, XII, 255-336.

Joseph Marie, Baron de Gérando (1772-1842) Also from Lyon and the lifelong friend of Jordan, following him into exile in 1793, back to France to fight against the Directory and in his second flight. De Gérando became absorbed in philosophy, particularly in the relationship between signs and the formation of ideas; he published 'Des signes et de l'art de penser' (1800), Histoire complète des systèmes philosophiques (1804) and other works. He made a career in the Napoleonic, and subsequently the Restoration administration. J.C.F. Hoefer Nouvelle Biographie Générale, etc. Paris 1855, 53-66.

2 Camille Jordan to Mackintosh 17 nivôse 1803 (28 January 1803). B.M. Add. MSS 52453.

3 Mme de Stael Dix années d'exil. Bibliothèque 10/18 edition, Paris 1966, 44

4 Jordan to Mackintosh 17 nivôse 1803. B.M. Add. MSS 52453.

war, he replied:

Mon cher philosophe, vous vivez toujours au milieu de nous. Nous conservons tous le~~s~~ souvenir~~s~~ de ce caractère noble et vrai, de cette conversation abondante et sereine, qui don~~ne~~^{ait} tant~~]~~ de charmes à votre commerce, de ces disputes oui, de ces dis utes dans les quelles vous portiez tou~~t~~ de méth~~o~~de, de finesse et de clarté... L'abbé Morellet dit qu'il n'avoit pas connu d'homme d'un meilleur esprit que vous et d'une conversation plus pure et plus attachante dans une langue étrangère... Ah, si vous aviez pu être un instant au milieu de nous! Les sentiments et les opinions que vous exprimez au sujet du spectacle que l'Inde vous offre sont si parfaitement sympathiques avec les nôtres que l'Abbé Morellet s'écria. C'est une chose véritable - même singulière co ment d'une extrémité de la terre à l'autre on peut se trouver si bien d'accord; on dirait qu'un fil électrique traversait le monde fait~~t~~ communiquer nos impressions reciproques.

He found Mackintosh's approach to ethical problems had also much in common with his own:

je crois avoir admettre cette sanction que la nature ou plutôt son auteur ont gravé dans notre âme, comme un sentiment primitif, qui a quelque chose d'analogue à votre sens moral et hutcheson.

And he as the author of a work on the comparative history of philosophical systems, saw Mackintosh's projects for statistical surveys as an extremely useful tool for comparative studies.⁽¹⁾ Although Mackintosh did not meet Mme de Stael on this visit, he was acquainted with some of the leading members of the group which centred around her firm defiance of Napoleon. Circumstances prevented contacts from being very great; but these early, tenuous but clearly felt sympathies did foreshadow later affinities. A very large number of Whigs had, of course, flocked to Paris after the Peace, but what very many failed to understand was the truly authoritarian nature of Napoleonic rule. Fox himself gave much offence, in Paris and England, by his seemingly

1 De Gerando to Mackintosh, 5 December 1805. B.I. Add. MSS 52451. For the content of Mackintosh's letter, see below VI, 209-210.

unquestioning admiration for Napoleon.⁽¹⁾ Mackintosh, as a Whig who had felt the full force of the revolution of 1789, and had then realised in earnest the tyrannical potentialities of Jacobinism, had more in common with the liberal survivors of the first revolution than with those Foxites who still kept their optimistic faith.

Mackintosh's position in the Foxite following had, certainly, been a doubtful one for some time; naturally the success of his lectures and the favour shown him by Addington's ministry, led Fox and others to regard him with some disfavour. The fluidity of political groups - Pitt and Grenville were leading their following in opposition to Addington after 1801 - and Fox's own disinclination to act, offered no incentives for loyalty to the Whigs. Since Napoleon's only too evident expansionist aims seemed to be calling very much into question the wisdom of a purely pacific policy, the resignation of Pitt over catholic emancipation opened up the possibility of a junction between his group and others. The Grenville following were to come over to Fox in 1804; but Mackintosh was more interested in speculating on the chances of agreement with the Pittites.⁽²⁾ Yet he always acknowledged Fox as his political leader, and was careful not to commit himself in any particular direction; after 1800, in fact, he confined himself chiefly to his professional work. As he later put it:

1 Maxwell (ed.) *The Creevey Papers*, I, 7. Creevey directly compares Mackintosh's success with Fox's reception.

2 Mackintosh to Robert Greene, 13 February 1801. B.M.Add. MSS 52451.

After having disburdened my mind in my lectures two or three years passed in which literature, professional pursuits & political questions then first arising unconnected with the Revolutiona , Controversies began to divert my attention from these painful subjects of reflexion. These two years were perhaps the most agreeable of my life. But all my old ideas were renewed & freshened by my visit to Paris in 1802. The sight of the places & the men of which I had read ~~and~~ thought & felt so much revived my intense interest. A very minute acquaintance with Revolutionary history made enquiry easy & successful. On my return to London I was eager to impart all the extraordinary things I had seen & heard - I did not consider consequences with respect to myself. I think I did observe some caution & reserve respecting Mr. Fox ~~and~~ his friends who had then visited Paris, more than was easy for a Person of my character, but perhaps not so much as the delicacy of the circumstance required...I did not conceive that they could misunderstand me. I spoke warmly and carelessly. Chance brought me at that time into the society of their antagonists more than once...(1)

The reason for this recall of events was that yet another facet of the quarrel between Mackintosh and Parr related to Fox; it was, probably, the chief issue. Mackintosh was convinced that Fox's indifference towards, or dislike of him, was partly due to Parr's having repeated Mackintosh's careless conversation. There is no first-hand evidence at all for Fox's view of Mackintosh, and it is certain that from Bombay any coolness that may have been evident was vastly magnified. In 1799, and 1800, the two were, according to Mackintosh, in agreement on general principles.⁽²⁾ Samuel Rogers gives a plausible account of their relationship:

Mackintosh was considered by Fox as having deserted the party, and at one period of his life he resented such conduct ^{very} deeply, but that time was past with him. Before he left England, and after Mackintosh's declaration they met at dinner somewhere, and Mackintosh introducing the subject of the History, made an offer of assistance,

1 Mackintosh to Richard Sharpe, 9 December 1806, B.M.Add. MSS 52451.

2 T. Green Extracts from the Diary of a Lover of Literature, 139, 234.

with regard to enquiring after documents, which offer Fox accepted very cordially, and he would not have done so if ~~that~~ feeling had been very strong in him. (1)

This meeting probably took place in 1801; in January 1802 Mackintosh wrote to Parr, in connection with Fox's history of the reign of James II:

I have been lately digging for Fox to find materials about the history of the revocation of the Edict of Nantes, which are more scanty and inaccessible than I had before supposed. (2)

For a few months in the summer and autumn of 1802 Fox was in Paris, working on papers in the Dépôt des Affaires Étrangères, so that it is just possible that Mackintosh may have been concerned with the progress of research there. Certainly, when he embarked on his History of the Revolution in England, he saw himself as continuing the work which Fox had mapped out. (3)

On reviewing the causes of Fox's alleged coolness towards him, Mackintosh found three possible causes, all aggravated by Parr's indiscretions. The first was the charge of having spoken ill of Fox, and this he denied, except, possibly in fair criticism to other adherents of Fox or to close friends. A further issue was the publication of two letters in the Morning Post in 1802, attacking Fox for his attitude to the Peace; some suspected Mackintosh as the author - their standpoint was not far from his, in that they questioned why Fox, the champion of liberty, had not made the slightest gesture

1 Recollections by Samuel Rogers. Edited with a biographical notice by W. Sharpe, London 1859, 75. On a visit to Dr. Paley, Mackintosh enlightened his host about Mr. Fox's 'great historical design'. G.W. Meadley, Memoirs of William Paley, D.D. London, 1809, 137.

2 Mackintosh to Parr, 13 January 1802. Johnstone Works of Samuel Parr, VIII, 572.

3 For Fox's History, see J.R. Dinwiddy 'Charles James Fox as Historian' Historical Journal, XII, 1969, 23-34.

against the despotism of Napoleon . If not their author, it was thought that Mackintosh might have inspired the real author, Coleridge. But it is hardly likely that Fox believed this; James Scarlett estimated the real situation:

I ~~can~~^{can} assure you that he did not believe you had any share in those letters of Coleridge. How could he? I passed a day in his company at Holland House & took an opportunity when your name was mentioned of introducing ~~that~~ subject, because I had heard from a friend of his that Mr. F. did not suppose those letters to be yours. I cannot distinctly recollect what passed but my impression was that he never thought them your composition, ~~and~~ it was ~~pretty~~ well known ^{that} Coleridge was the author & that he had written as much ~~as~~ ^{co-gratifying} obvious spleen agt you as any other purpose. I did not hear Mr. F. say, nor did I hear from others that he had said a word to your prejudice. I believe he was too generous & too discreet to have done so, even if he had conceived that kind of resentment which is natural to the chief of a party whn one of his adherents received preferment from another hand. (1)

The third issue was trivial: that Mrs. Mackintosh had refused to acknowledge Mrs. Fox, formerly Liz Armitstead. Mackintosh denied this charge with the others.⁽²⁾ He wrote to Fox himself in 1806, when further rumours reached him, but the letter arrived too late.⁽³⁾ Mackintosh's fears were exaggerated, but he could hardly hope to escape the consequences of receiving a lucrative office from Addington's ministry. The Recorder of Bombay was still to declare his sympathies publicly, in the 'Character of C.J. Fox', a brief tribute, which appeared first in the Bombay Courier on Fox's death, and then in

1 Scarlett to Mackintosh, 17 September 1807, B.M.Add. MSS 52451.
Most of Mackintosh's friends were similarly reassuring. Sharpe to Mackintosh, 24 May 1804 and Mackintosh to Sharp, 16 July 1806, in which he refers to letters from Erskine and Adam. B.M.Add. MSS 52451.
2 Mackintosh to Sharpe, 9 December 1806. B.M.Add. MSS 52451.
3 Amelia Sloper to Mackintosh, 21 June 1804. B.M.Add. MSS 52451;
Mackintosh to Fox, 20 December 1806. B.M.Add. MSS 51653. Fox died on 13 September 1806.

Dr. Parr's Characters of the late Charles James Fox; among that collection of eulogies, Mackintosh's contribution stood out for its shortness and simplicity.⁽¹⁾

Another disillusioned admirer of the Revolution, and an old antagonist of Mackintosh, Friedrich von Gentz, visited London for two months at the end of 1802; he enjoyed an unprecedented welcome for such a young and relatively uninfluential foreigner. But Gentz had for some time been subsidised by the British government, and his writing was notably Anglophile. He was an outstanding advocate of the principles of the old European confederation based on a balance of power and on recognition of principles of international law.⁽²⁾ He was well received by all in London, except the Foxite group; with Mackintosh he quickly established a rapport. Mackintosh seemed to Gentz one of the most fascinating men in London;⁽³⁾ a year later Gentz wrote to the new Recorder of Bombay, regretting his departure for India:

Il seroit très déplacé et très ridicule de ma part de vous encenser de quelques stérils hommages, si ce que je vous dis ici ne partoît pas du fond de mon âme et de la conviction la plus intime et la plus complète. J'ai vu en Angleterre un assez grand nombre d'hommes parfaitement estimables; j'en ai vu même quelques uns de très supérieurs; mais je vous avoue franchement que je n'en ai trouvé aucun, qui réunisse à des connoissances aussi étendues et aussi variées que les vôtres, un coup-d'oeil général également vaste et également remarquable par sa justesse. Je n'oublierai de ma vie deux ou trois conversations que j'ai eues avec vous, et qui m'ont donné sur plusieurs objets de la plus haute importance, et entr' autres sur la place de votre nation occupe proprement dans l'ordre moral et politique, des aperçus plus lumineux et des renseignements plus satisfaisans, que tout ce que j'ai jamais trouvé dans aucun livre, ni dans aucune source d'instruction quelconque.⁽⁴⁾

Mackintosh too recalled these conversations, frequent and confidential

1 Philopatriis Varvicencis (Dr. Samuel Parr) Characters of the late Charles James Fox, 2 vols., London 1809, I, 162-5; W. Derry Dr. Parr, 252.

2 Gentz to Adam Muller, 22 November 1802. Briefe von und an Friedrich von Gentz.. Herausgegeben von F.C. Wittichen (E. Salzer) 3 Bd, Munichand Berlin, 1909-32, I, 393.

3 P.R. Sweet Friedrich von Gentz. Defender of the Old Order, Wisconsin, 1941, 51-50; also G. Mann Secretary of Europe The Life of Friedrich von Gentz, enemy of Napoleon...Translated by William H. Wiglom, New Haven, 1946, 94.

4 Gentz to Mackintosh le 6 octobre 1803, B.M.Add MSS 52451.

in which he believed that he had fundamentally changed Gentz's opinions on English politics.⁽¹⁾ Later the two corresponded; and on 6 October 1803 Gentz wrote at length to Mackintosh, suggesting a way in which the inadequacies of British intelligence and diplomacy abroad might be supplemented. An agent abroad, a man both attached to British interests, and well acquainted with politics on the Continent could provide an invaluable channel of communication. He himself could not take on such a task, except in the most unlikely and unspecified circumstances, but he was still convinced of the necessity for it.⁽²⁾ This letter, which Mackintosh passed on to Addington and his ministers, was presumably a part of the offensive that Gentz was conducting in the summer of that year, in an attempt to stimulate Addington's government into a more vigorous prosecution of the war, and, possibly, into making a greater use of his own talents.⁽³⁾ The task that faced England seemed to Gentz nothing less than the regeneration of Europe; no merely defensive measures could possibly suffice. Gentz' own preference was clearly for Pitt to return at the head of a ministry. He found that Mackintosh's views were very similar to his own. Mackintosh too had been an active propagandist for war; in July 1803 he wrote to Gentz:

I have myself been endeavouring to throw a few sparks into the English heart by means of the newspapers, all of whom are behaving very well, and acting very cordially against the common enemy of mankind. I ought to add, that I think within the last fortnight there are some consoling symptoms of a revival of our spirit. (4)

1 Mackintosh to Sharpe, 9 December 1806, B.M. Add. MSS 52451.

2 Gentz to Mackintosh le 6 octobre 1803, loc.cit.

3 Mackintosh to Gentz, 5 February 1804, Memoirs, I, 191-6.

4 Mackintosh to Gentz, 12 July 1803, G. Schlesier Schriften von und an Friedrich von Gentz. Ein Denkmal, 5 vols., Mannheim, 1838-40, IV, 308. There is a copy of the letter in the National Library of Scotland, MSS 1809, f 136.

The two publicists had much in common; though it was hardly likely that Mackintosh's advocacy could help to advance Gentz.

In 1803, however, Mackintosh was to be best known for his defence of Jean Peltier, an émigré royalist bookseller, against whom the government brought a charge of libelling Bonaparte; after the Peace of Amiens, the First Consul was regarded as the head of a friendly state, and brought pressure to bear on the Addington ministry to ensure that his status was fully recognised, and his detractors punished. The Attorney-General, Spencer Perceval, undertook the prosecution rather reluctantly, and the jury was selected with great care.⁽¹⁾ The trial was held on 21 February; Mackintosh's speech in Peltier's defence was widely admired as a model of eloquence, though some thought it rather less calculated to secure an acquittal.⁽²⁾ There was little doubt that Peltier had libelled Bonaparte; the prosecution emphasized those references in L'Ambigu, the émigré newspaper, which might well be regarded as incitements to assassination. Mackintosh had a poor case, and some of his points had little bearing on the issue. He made it clear that Peltier had written in French, and mainly for other émigrés; he argued that in certain cases Peltier was merely republishing the work of republican factions in France, as a satirical representation of Jacobinical projects, and he dismissed other passages as obscure and mythological.

1 Spencer Perceval to Joseph White, 26 February 1803. P.R.O. T.S. 11/429/1357. There is a list of marked jurors in these papers.

2 The Farington Diary...Edited by James Greig, 8 vols., London 1922-8, II, 84. Farington was one of the jurors and gives a full account of the trial. Mackintosh spoke for just over four hours, and 'the greatest part of his oration was irrelevant to the subject & from its length to me became tedious and at times I could scarcely forbear sleeping over it'.

However, by far the greater part of his speech was taken up with a more general discussion of the freedom of the press in England; Mackintosh saw the trial as:

the first of a long series of conflicts between the greatest power in the world and the only free press now remaining in Europe. (1)

Freedom of discussion, and of the press, had once been shared by other free states - Holland, Switzerland, and some German towns - now engulfed by the Revolution. In the dissolution of society that had followed the convulsions of revolution, the only binding principle that had been found strong enough was the military power of despotism. The guilt should belong less to the usurper than to those responsible for the atrocious crimes of Jacobinism; Mackintosh's aim was to sway the jury by pointing to the contrast between the dramatic and terrible deeds of the Jacobins, of Fouché and Collot d'Herbois, and the royalism of Peltier.

Mackintosh argued that the press had always been regarded, since the time of Elizabeth and Philip of Spain, as one of the most powerful weapons for rousing the national spirit; and since then it had been transformed:

In the course of the eighteenth century a great change took place in the state of political discussion in this country:—I speak of the multiplication of newspapers. I know that newspapers are not very popular in this place, which is, indeed, not very surprising, because they are known here only by their faults;..With all their faults, I own, I cannot help feeling some respect for whatever is a proof of the increased curiosity and increased knowledge of man's mind, and I cannot help thinking that if somewhat more indulgence and consideration were shown for the difficulties of their situation, it might prove one of the best correctives of their faults, by teaching them that self-respect which is the best security for liberal conduct towards others.

1 The Trial of John Peltier Esq. for a libel against Napoleon Bonaparte, first consul of the French Republic. At the Court of King's Bench, Middlesex, on Monday the 21st February 1803. Taken in shorthand by Mr. Adams, and the Defence revised by Mr. Mackintosh. London 1803, 83.

The consequences of this vast increase in the dissemination of news were without doubt beneficial:

At home it has, in truth, produced a gradual revolution in our government. By increasing the number of those who exercise some sort of judgment on public affairs, it has created a substantial democracy, infinitely more important than those democratical forms which have been the subject of so much contest. So that I may venture to say, England has not only in its forms the most democratical government that ever existed in a great country, but in substance has the most democratical government that ever existed in any country;- if the most substantial democracy be that state in which the greatest number of men feel an interest and express an opinion upon political questions, and in which the greatest number of judgments and wills concur in influencing public measures (1)

Again this emphasis on the expression of opinion, rendering actual representation unnecessary, echoed Burke's notion of a real general will.

Because of this increased public concern, newspapers had long enjoyed liberty to criticise the conduct not only of the rulers of Britain, but of those of all the states of Europe; the obvious example was that of the partitions of Poland. On all three occasions of partition, the English Press, regardless of diplomatic policy, supported the rights of the dismembered country; even in 1793, when Britain desperately needed her powerful allies, the crime was condemned in the strongest possible terms. If Britain had been at peace with France during the years 1792-4, would the British press have been prevented from reporting the bloody crimes of the Jacobins?

When Marat..called for two hundred and seventy thousand heads, must our English writers have said that the remedy did, indeed, ^{seem} to their weak judgment ~~seem~~ rather severe; but that it was not for them to judge the conduct of so illustrious an assembly as the National Convention, or the suggestions of so enlightened a statesman as M. Marat? (2)

1 Ibid, 160-1.

2 Ibid, 174.

Such a theme might appear remarkable for its complacency, in these years in which Pitt had effectively silenced free political discussion. The trial of Peltier in itself disproved much of Mackintosh's argument; Lord Ellenborough directed the jury, in unmistakable terms to find the prisoner guilty:

Gentlemen, upon the whole matter, on the best consideration I have been ble to give these different publications, it appears to me the direct and indirect tendency of ~~them~~ (notwithstanding the very ingenious gloss and colour, by eloquence almost unparalleled, by which they were defended) was to degrade and vilify, to render odious and contemptible, the person of the First Consul, in the estimation of the people of this country, and of France, especially in ^{the estimation of the people of} France, and likewise to excite to his assassination and destruction. That appearing ~~to~~ to be the immediate and direct tendency of these publications, I can ot in the direct discharge of my duties do otherwise than state that these publications... are in point of ~~law~~ libels. And in the correct discharge of your duty I am sure no memory of past or expectation of future injury, will warp you from the strength and even course of justice. But your verdict will mark with reprobation all projects of assassination and murder. (1)

The jury found the prisoner guilty without retiring.

Some of the Whigs, like Thomas Erskine, admired Mackintosh's eloquence without reservation;⁽²⁾ but Lord Holland delivered a reprimand:

I hope ~~that~~ you will have many & great causes, but no more where you think it necessary for ^{your} client to attack so furiously the Jacobins, as though I am no great admirer of them or the Directory, still I am afraid the public are apt to confound them with the course of the revolution & I should not like to try the experiment of your eloquence ^{reviving the} against that cause which however perverted & disgraced by those who took it in hand must ever be intimately connected with the cause of liberty all over the world. (3)

1 Ibid, 206-7.

2 Erskine to Mackintosh n.d. Memoirs I, 182.

3 Lord Holland to Mackintosh, 14 March 1803, B.M. Add. MSS 51653.

Mackintosh was never to reconcile himself to the Hollands' inheritance from Fox, their strange admiration of Napoleon. Mme de Stael, who had experienced Napoleonic rule at closer quarters, read the defence of Peltier when in exile:

C'est dans ces jours orageux que je reçus le plaidoyer de M. Mackintosh; là je lus ces pages où il faisait le portrait d'un jacobin qui s'est montré terrible dans la révolution contre les enfants, les vieillards et les femmes, et qui se plie sur la verge du Corse qui lui ravit jusqu'à la moindre part de cette liberté pour laquelle il se prétendait armé. Ce morceau, de la plus belle éloquence, m'émut jusqu'au fond de l'âme; les écrivains supérieurs peuvent quelquefois, à leur insu, soulager les infortunés, dans tous les pays et dans tous les temps. La France se taisait si profondément autour de moi, que cette voix, qui tout à coup répondait à mon âme, me semblait descendre du ciel: elle venait d'un pays libre. (1)

Gentz offered to translate the work for him. (2)

The critical reception of the work was strangely mixed; the Anti-Jacobin Review and the newly-founded Edinburgh Review for once found themselves in agreement. The Anti-Jacobin Review claimed to be defending the freedom of the press; yet it attacked Spencer Perceval for his failure to make any reference to the truth or failure of the allegations made by Peltier:

To volunteer such an exhortation not merely to pay implicit obedience to, but even to respect the government of a regicidal usurper, and so to compliment usurpation and injustice at the expense of legitimate right, was, we must say, unworthy of a British monarch's attorney-general. (3)

Mackintosh's speech was estimated to be one of the 'most brilliant exhibitions of forensic eloquence of which the British or any other bar can boast'. Only the weakness of the government had allowed

1 Mme de Stael Dix années d'exil, 58.

2 Mackintosh to Gentz, 12 July 1803. Schlesier Schriften von Friedrich von Gentz, IV, 308.

3 Anti-Jacobin Review, XVI, September, 1803, 80-93.

Bonaparte to pursue his own prosecution through the British courts; the prosecution should have borne the onus of proof. If Peltier was guilty, why had he never been brought to judgment? The outbreak of war had, in fact, saved Peltier, from ever paying the penalty. The Anti-Jacobin had been able to extract the pure counter-revolutionary doctrine from the issues of the Peltier trial. The British Critic, on the other hand, took a ministerial line:

This prosecution may be considered as intended by our government to convince that of France, that everything would be done which was consistent with our laws, to preclude all reasonable cause of complaint against the licence of our press...That it failed to satisfy, or even to please, the despotic ruler of France is not wonderful; since it was conducted with the independent dignity and essential justice of our courts. (1)

Francis Horner, in the Edinburgh Review, noted what a congenial task Mackintosh had had, in defending the freedom of the press, in being able to appeal to principles:

that are at once the conclusions of the soundest philosophy, and the established prejudices of this audience. But those principles have never been illustrated with such force of historical painting, such extent of philosophical reflection and such warmth of oratorical diction as in the passages which Mr. Mackintosh has bestowed upon this noble subject. (2)

The incitement to assassination was plainly evident in L'Ambigu; Mackintosh was able only to palliate the offence, but this he did superlatively well. Horner recognised the supremacy of the letter of the law, a recognition not incompatible with Mackintosh's main arguments.

In November 1803, Mackintosh was finally appointed to the position of Recorder of Bombay.⁽³⁾ His motives for accepting this were mixed;

1 British Critic XXII, 1803, 176-80.

2 Edinburg Review II, 1803, 478.

3 He was appointed on 22 November 1803, and knighted on 21 December. Annual Register, London, 1803.

financial reasons were by this time compelling. At the same time he was fascinated by the opportunities for learning and scholars' ip that India seemed to offer, and also by the complexities of the still inchoate legal system. Francis Horner, who was close to Mackintosh at this time, described as well as any what was hoped for in Bombay:

Under another clime, and among the ruins of ancient refinement, it will indeed prove most interesting to a mind which has deeply meditated the policy and revolutions of Europe, to study the far different frame of Asiatic laws, and guided by the light of science, to trace the uniformity of our moral nature under the most artificial disguises and amidst opposite extremes of variation. Nor ought we to forget the benefits imparted to that amiable, though remote portion of our fellow subjects, by strengthening and enlightening the judicial administration to which their municipal rights are entrusted; and which, from the half-incorporated mixture of languages and laws and usages, requires qualifications of a much higher order than that of professional erudition. Yet, even for these important purposes, this is not a period when England, the last bulwark ~~yet~~ undemolished of popular government and of European independence can easily spare a single advocate of genuine liberty, a single labourer in the philosophy of public affairs, a single genius that in it is great and good old cause can command an influence over other inds. (1)

Mackintosh was to regret his decision bitterly; yet his stay in India did enable him to examine, through Whig spectacles, its institutions and society.

1 Edinburgh Review, II, 484.

VI A VIEW OF INDIA

Conflict and confusion over the nature of British rule in India were at their height during the years that Mackintosh spent in Bombay. In 1803 Wellesley had not completed the conquests that would ensure British dominion; the East India Company still held its commercial monopoly, and its stranglehold on the administration of the country, while imperialist sentiment and the clamour against monopoly were growing. Bombay, the third Presidency town of India, ranking some way below Calcutta and Madras, was gradually transforming itself from a mercantile community into the government of a large part of India. By 1805, when peace was made with the last of its enemies, it had established a strong position in Western India, and was to maintain an uneasy peace for the next eleven years with its neighbours, the Marathas.⁽¹⁾ When Mackintosh arrived, the city, situated on an island, had a population of around 160,000, of whom only 1,700 were Europeans;⁽²⁾ coming as he did from the most brilliant society of London, it is not surprising that he should have very soon regretted his decision to exile himself in this remote and secluded settlement. His natural indolence did not allow him to press his judicial and scholarly ambitions very far; but in his plans, and in his achievements, the elements of his Whiggism are still apparent.

1 S.M. Edwards The Gazetteer of Bombay City and Island, 3 vols., Bombay, 1909, II, 125-129.

2 Ibid, I, 158-9; on Bombay in this period, see P. Nightingale Trade and Empire in Western India 1784-1806, Cambridge 1970, *passim*; P. Spear The Nabobs, 2nd edition, London 1963, Ch. IV; H. Furber John Company at Work, Harvard 1951, 207-24.

i The Recorder of Bombay.

Mackintosh arrived in Bombay, with his family and secretary, William Erskine, on 26 May 1804, in the midst of one of the worst famines the city had seen;⁽¹⁾ as Recorder he used the occasion for a little propaganda on the benefits of British government; he decided to issue a charge to his Grand Jury, at the opening of every session, which, when reprinted in the Bombay Courier would, he hoped, 'circulate useful and liberal ideas'.⁽²⁾ He compared the work of the British government, which had imported large quantities of rice, provided public works for refugees, and established a hospital, to the neglect and indifference shown by the princes of the neighbouring territories, particularly the Peshwa of the Marathas. Mackintosh estimated that the government had saved the lives of one hundred thousand people in the island and on the mainland; and the European inhabitants agreed with him that these arguments went far to justify their rule over the helpless natives of India.⁽³⁾

Unhappily, such agreement was rare; Mackintosh found too little cause for humanitarian congratulations. Fox and Burke had determined the Whig attitude to the East India Company, in their attacks on its tyrannical oppression of the native population, and its engrossment of patronage; the study of political economy had provided further reasons why its monopoly should be fought on all occasions. Mackintosh

1 Mackintosh's two daughters by his second wife, Bessy and Fanny, were born in 1799 and 1800. His only son, Robert, was born at Bombay in 1806. For descriptions of this famine, see Mackintosh to Adam, 13 August 1804. Blair Adam Papers, and Mackintosh to Sydney Smith, 14 August 1804 (extract). Horner Papers, LS.E. Vol. VIII, 2.

2 Memoirs, I, 224.

3 Bombay Courier, 20 October 1804; J. Forbes Oriental Memoirs, 4 vols., London 1813, IV, 291-5.

fully inherited the e views, and, though he believed that any English government might be preferable to an Indian one, was convinced that the abolition of the monopoly would be of gre t benefit to India.⁽¹⁾ His whole outlook in India was guided by these considerations; this will be seen in the part w ich he took in events during this period, and in his attitude towards the representative of the Company, the Governor-in-Council of Bombay.

Soon after his arrival Mackintosh found himself to be unpopular in the limited society of Bombay, because of his Whiggish opinions, his leniency towards natives in his court, and his stand against corruption.⁽²⁾ He wrote, despondently, to Dumont:

A Colony is a Province with fewer men of education & leisure & less occasional influx or accidental visits of intellect than if it were in Europe. It is a Province where the great Prizes of political & literary ambition are too distant to rouse any mental exertion, where the European inhabitants have already attained a sort of elevation with which they are satisfied, over slaves or slavish natives - ? where all the natural consequences of extinguished ambition may be seen in the prevalence of sordid or sensual or at best of frivolous pursuits. An East India settlement is the worst kind of colony, because there are no fixed inhabitants, no hereditary proprietors, the idleness of some of whom has always some chance of seeking refuge among books, because we are all a venturers, who avow to ourselves & to others the object of our coming with an effrontery which must lower us in our esteem, because every man who seeks advancement must pay too undistinguishing a court to his superior & because too many are disposed by their situation & believed themselves justified by policy in keeping their inferiors at a tyrannical distance not inco sistent with a capricious favouritism which selects a few of them and generally the most worthless as the objects of familiarity & favour. To complete the climax I suppose Bombay to be the w rst of the East India's settlements because it is the smallest & consequently has the fewer channels of individual excellence & the fewer means of elevating the sentiment or rousing the Understanding. (3)

1 Mackintosh to Dumont, 18 December 1806. Bibliothèque publique et universitaire de Genève. 33/3 ff 1-3; Mackintosh to Lord Holland, 15 December 1806. B.M. Add. MSS 51653.

2 'I have been almost persecuted for nonconformity to the idolatrous worship of Pitt which has been founded on this island'. Mackintosh to Adam, 13 July 1806. Blair Adam papers.

3 Mackintosh to Dumont, 18 December 1806, Bib. pub. et univ. de Genève. 33/3 ff 1-3.

He calculated that it would be two years, on his salary of £5000, before he cleared his debts, and began to accumulate some capital; moreover, a five-year residence was necessary in order to merit a small pension.⁽¹⁾ Still, he considered other possibilities: the Chief Justiceship of Bengal, vacant for a time,⁽²⁾ or even a reforming penal settlement at Botany Bay.⁽³⁾ But when there seemed little hope of further patronage, he began to air a rather different plan: that of representing the private merchants of India, as their agent in Parliament, for an annual salary. He first mentioned this in 1806, to Robert Smith, an old friend, and the Advocate-General of Bengal, who rebuked him severely for the very notion.⁽⁴⁾ However, Mackintosh, without scruples, was already sounding out the opinions of the leading merchants of Calcutta, through a connection, Lachlan Mackintosh, already established in a leading house there. A similar scheme had occurred once before to the private merchants of the town - though the idea of a salary was new to them. But the proposition was directed against the interests of the East India Company so clearly, that there was some fear that they might act to send home any merchants concerned.⁽⁵⁾ Mackintosh was here placing himself firmly on the side of the private trade interest; he seems to have been successful in winning the Calcutta merchants over. When Lachlan Mackintosh left for England, he sent the Recorder a number of notes

from the principal houses of Calcutta, expressing their approval of

1 Mackintosh to Sharpe, 24 February 1805. B.M.Add. MSS 52451 ff 84-90.

He hoped from 1806 to save around £3500 a year. But at the beginning of his stay, in 1804 he had been advanced £3000 by the East India Company. I.O.R. Minutes of the Court of Directors B 138 f920, 16 December 1803.

2 He asked Adam to sound the Prince of Wales, and Addington on his chances. Mackintosh to Adam, 13 August and 19 September 1804; Charles Grant to Mackintosh, 17 September 1805, B.M. Add. MSS 52451.

3 Memoirs I, 342-3.

4 Mackintosh to Sharpe 10 May 1806. B.M.Add. MSS 52451.

5 Lachlan Mackintosh to Sir James Mackintosh, 23 April 1806. N.L.S. Add. MSS 6360 ff65-6. For a study of the rising power of the private trade merchants at Bombay, see Nightingale Trade and Empire in Western India. Ch. VII, 'The Conflict of Interests 1803-6'.

the scheme; if Mackintosh agreed to act, they would put it into execution.⁽¹⁾ But the stern and unanimous disapproval of all Mackintosh's friends, and the real impracticability of the plan prevented him from taking any further steps.⁽²⁾ His depression at life in Bombay gradually became so great, that, two years later, he wrote to Richard Sharpe:

If any of the great persons in a position will give me a seat of Parliament, I am willing to submit to all the privations and sacrifices which may be necessary for my independence. (3)

When everything else had failed, and all his hopes exhausted, he placed his resignation in the hands of his friends, in July 1808; but they, thinking of his financial circumstances, refused to act on it.⁽⁴⁾

The tedium of life at the Presidency was, of course, occasionally relieved. Mackintosh took an active interest in the diplomatic position of Bombay. There was always the possibility that Napoleon, with or without Russia, would launch an invasion into India - and Bombay was the gateway to the British dominions. In 1803, a young cadet, Claudius Rich, who already knew several oriental languages, set out as a writer to Alexandria, with letters of introduction to Mackintosh from Robert Hall; on the death of the Consul at Alexandria, Rich

1 Lachlan Mackintosh to Sir James Mackintosh, 9 February 1808. N.L.S. 6360 f136; Mackintosh to Sharpe, 7 July 1808, B.M. Add. MSS 52451.

2 Mackintosh defended himself by pointing out that his field of action would be restricted on one issue only, and that would involve his own conscientious objection to the monopoly of the East India Company. He compared such a position to Franklin's place as agent for Massachusetts, or Burke's for New York. Mackintosh to Sharpe, 13 July, 1809. B.M. Add. MSS 52452. Mackintosh to Adam, 13 July 1809, Blair Adam Papers.

3 Mackintosh to Sharpe, 7 July 1808, B.M. Add. MSS 52451.

4 Ibid; G. Wilson to Mackintosh, 21 December 1808, B.M. Add. MSS 52451.

wandered over Turkish Asia, mastering several more languages, and from Constantinople beginning a correspondence with Sir James. In September 1807, he came to Bombay, where he greatly impressed Mackintosh. He stayed for a few months with William Erskine; by Christmas of that year, he was engaged to Mary Mackintosh. On 16 January 1808 he was appointed at the age of twenty-four to the post of Resident at Bagdad, and married a few days later.⁽¹⁾ Sir James always remained particularly interested in his progress, and kept up a frequent and lengthy correspondence with Bagdad on the Turkish policy that Rich was almost independently conducting.

In the same year, Mackintosh became concerned in British diplomacy through his friendship with General John Malcolm. It was thought necessary by the government to despatch envoys to some of the buffer states between British India and her enemies, to Teheran, Lahore, Cabul. Lord Minto, the Governor-General, and a Whig, appointed by the short-lived 'Ministry of all the Talents' of 1806-7, had had some difficulty in obtaining the sanction of the Court of Directors for the choice of Malcolm as special ambassador to Teheran. Simultaneously, an envoy, Sir Harford Jones, was sent with letters from the British Government in London to Persia; confusion set in at Bombay, where both ambassadors stopped for some time. Opinion there was strongly on Malcolm's side; Mackintosh sympathised with Minto's predicament:

1 C.M. Alexander Baghdad in Bygone Days. London 1928. Passim
This is a biography of Claudius Rich, b. one of Mackintosh's descendants, who appears to have used unpublished family manuscripts which have not been traced. See also Robert Hall to Mackintosh, 30 December 1803 Memoirs, I, 200-1. For Rich's appointment, see Jonathan Duncan, Governor of Bombay, to Lord Minto, 17 January 1808 'It has appeared to me & to Sir James Mackintosh whom I have consulted on this special occasion that we should not miss the opportunity that thus presents itself for establishing on the extreme range of the British influence on India, a very able, zealous and extremely qualified Watchman (such as will be found in Mr. Rich) against the french intrigues in that quarter'. N.L.S. Minto Papers M337.

His situation must be owned to be very peculiar, that of a Governor-General in the most critical moment of Indian annals who looks to his superiors at home with much more expectation of being made responsible even for misfortune than of receiving commendation for the wisest course. (1)

After Malcolm's departure, on a somewhat ambiguous commission, Sir Harford Jones consulted Mackintosh on his best line of conduct under the circumstances; the Recorder had no hesitation in urging him to delay his own mission:

You will easily believe that I commended his moderation, his absence of eagerness to display personal importance, his sacrifice of personal feelings to public advantage &c. &c. I said all that it was natural to say on such an occasion, and with as much warmth as could be shown without too strongly implying that his not undertaking the mission was a public benefit...During the whole of this affair, I have felt all the passions of a partisan as warmly as in the first Westminster election that interested my boyish zeal. (2)

Jones then remained at Bombay until he heard of Malcolm's departure from the Persian Gulf; but he left for Teheran without waiting for his countermanding orders from Lord Minto.⁽³⁾ Malcolm's mission was a failure; not until 1810 was he to reach Teheran and make satisfactory contact with the Persian government. Even then he was greatly impeded by Jones' presence. Mackintosh's interest in the affairs of Turkey and the diplomatic initiatives in Persia was genuine and sustained; his fear of a Franco-Russian invasion was a permanent factor in his calculations, and appears many times in his journals.⁽⁴⁾

1 Mackintosh to Malcolm, 17 April 1808. I.O.R. Home Miscellaneous Series 736 ff 135-146; cf also C.H. Philips The East India Company, 1784-1834, 175-6; Lord Minto in India: Life and Letters of Gilbert Elliot, First Earl of Minto, edited by the Countess of Minto, London 1880, 126ff.

2 Mackintosh to Malcolm, 17 April 1808, partly printed in J.W. Kaye The Life and Correspondence of Sir John Malcolm, 2 vols., London 1856, I, 439-41, and see 408-53 for a complete account of these events.

3 For Mackintosh's account see Malcolm to John Elliot, 27 April 1809. Minto papers M186, N.L.S.

4 Mackintosh to Malcolm, 13 July 1808, Memoirs I, 417-23; Mackintosh's review of Mountstuart Elphinstone's Account of a Mission to Cabul, Edinburgh Review, XXV, 1815, 398-404.

Another affair in which Mackintosh took sides very definitely against the home government and the East India Company was the Madras mutiny, by the officers of the Company's Madras Army, in 1809. The mutineers resented the high-handed actions of Sir George Barlow, the new Governor of Madras, and former acting Governor-General. Malcolm was called in to quell the mutiny, and took what were widely regarded as conciliatory measures; he kept Mackintosh continually informed of events.⁽¹⁾ In approving Malcolm's judgment, Mackintosh recalled what was for both of them a primary source of authority - the Burkean orthodoxy:

Remember what our master said of the French 'They have begun by a most terrible operation. They have touched the central point about which the particles that compose armies are at repose'. All that is said on armies will reward you for a repusul. It is towards the latter part of the Reflections.

The appeal to private soldiers to act against their officers, made by Sir George Barlow, was a far greater challenge to the structure of military society, than was the officers' resistance to their military governor:

The relation of the private soldier to the subaltern is the keystone of the arch. An army may survive any other change, but to dissolve that relation is to dissolve the whole. There begins the obedience of the many to the few. (2)

Sir George Barlow finally resolved the crisis by requiring the officers to sign an oath of loyalty to the government, on pain of suspension or dismissal. Mackintosh agreed with the Foxite Whigs in England, in condemning both Barlow and Minto, who had acquiesced in the settlement; the Recorder wrote to Malcolm that he himself,

1 Kaye Life and Correspondence of Sir Jo'n Malcolm, I, 457ff.

2 Mackintosh to Malcolm, 20 August, 1800. Ibid, I, 500-3

at Bombay, was slandered as disaffected to the government.⁽¹⁾ But he urged Malcolm to forget his injuries, if at all possible, and to remain in India, to exert his influence at Lord Minto's side.⁽²⁾ After these events, Malcolm in fact, settled at Bombay, with an allowance from Minto to enable him to write his history of Persia. Mackintosh's journals contain many references to their dinners and meetings. Mackintosh also helped Malcolm to write his pamphlet against Barlow, Observations on the disturbances in the Madras Army,⁽³⁾ and was entrusted with its publication on his return home.⁽⁴⁾

It will have been evident that Mackintosh was very ready to exert himself against executive authority, in whatever form it appeared; this tendency is even more plain in his practical judicial policy. Ever since the introduction of royal courts into India, in 1773, under Sir Elijah Impey, the history of their relationship with the administration of the Company had been disturbed and at times tempestuous. At Bombay, the Recorder's Court was newly established. Because of the growth of importance of Bombay after the conquests of Wellesley, in 1798, the Court of the Recorder replaced the old Mayor's Court; Sir William Syer had presided there from 1799 to 1802, and during this period several English barristers appeared there to practise. The Recorder, who had to be an English barrister of more than five years standing, sat with the Mayor, and three of the nine

1 Mackintosh to Malcolm, 2 December 1809. Ibid., I, 504-7; C.H. Philips The East India Company, 170-7.

2 Mackintosh to Malcolm, 16 September 1809. Kaye op.cit. I, 503-4.

3 London 1812.

4 Mackintosh to Wishaw, 13 August 1811. B.I.Add. MSS 52452; entry in Journal, 25 August 1811. M.Add. MSS 52438; Kaye op.cit. II, 54, 62 and 68-9. In the pamphlet, the passages from Mackintosh's letter of 20 August 1809, quoted above, are printed in the text, unacknowledged. Observations on the disturbances in the Madras Army, 38-9.

aldermen of Bombay during each ter . The Court was empowered to establish its own rules of practice, and to be Courts of Oyer and Terminer, and Gaol Delivery, in Bombay and Fort St. George, with its jurisdiction extending over British subjects residing within the British territories subject to the government of Bombay, and the territories of the native princes in alliance with the government. Jurisdiction over Indians outside Bombay itself was reserved for the judicial administration of the East India Company. At the turn of the century immense confusion still prevailed in this legal system; the English Court was expected to administer seven varieties of law: the common law and the statute law of England prevailing before 1726, and not expressly altered; the statute law expressly extending to India after 1726; civil law as in the ecclesiastical and admiralty courts of England; the regulations passed by the Governor-General and the Governor-in Council of Bombay; Hindu and Moslem law and usages in actions relating to inheritance and contracts, whenever a Hindu or Moslem was defendant. The judgment passed in the Recorder's Court was final; theoretically appeals went to the Privy Council, although in practice this did not happen before 1833.⁽¹⁾

The royal courts were regarded with much suspicion by the officials of the East India Company, because of the control they attempted to exert over the Company's activities. John Malcolm saw the problem clearly:

1 S.M. Edwards Gazetteer of Bombay City and Island, II, 217-23; W.H. Morley The Administration of Justice in British India; its past history and present state, comprising an account of the laws peculiar to India, London 1858. 13ff; F.D. Drewitt Bombay in the Days of George IV. Memoirs of Sir Edward West, Chief Justice of the King's Court during its conflict with the East India Company, London 1907, 9ff; M.P. Jain Outlines of Indian Legal History, Bombay 1966, 170-5, and 600-1.

There is an acknowledged necessity for those persons who fill the highest offices in India being vested with a power which is offensive to the feelings of an Englishman, and hardly in unison with any part of the character of our free constitution. But we cannot assimilate the rules and principles of British government with those which are essential to the maintenance of our sovereignty, as foreign conquerors, over the vast population of India. We may and do cast a heavy responsibility on those to whom almost absolute power is entrusted; but the checks which are placed on those in authority in England are incompatible with the condition of a ruler in India. (1)

Yet the only source from which a challenge to the power of the executive could come was the irresponsible and autonomous royal court; and Mackintosh, who came out to India with a firm determination to apply his belief in the impersonal agency of law, and to preach the necessity for a separation of powers, was unlikely to accept the monopoly of authority enjoyed by the Governor-in-Council of Bombay.

What seems to have startled him most was the prevalence of corruption in the colony:

The extent of the peculation practised at least in this Presidency, especially by military officers, would appear incredible if it were accurately stated. The eagerness to gain fortune is so undisguised, the means of concealment through native agents so great, the sums which pass through their hands so enormous, & their distance from such means of check and control as we have at the Presidencies so immense, that you must at once see it is impossible it should be otherwise. The age of Plunder is one and the People are oppressed & robbed only in the regular form of excessive taxation... I caught one of these plunderers once in my Court but the general policy of the Company & its Govt is to bury such enquiries in obscure Committees & in the few cases where enquiry is made to do no more than to send the most flagrant offender home to enjoy his fortune with credit...The darkness of monopoly covers everything. (2)

1 Sir John Malcolm, The Political History of India from 1784 to 1823, 2 vols., London 1826, II, 79.
 2 Mackintosh to Whishaw, 20 February 1808, N.L.S. Add. MSS 2521, f135.

One of the reasons why Mackintosh was so unpopular in Bombay was his determination to press home charges against servants of the Company found guilty of corruption. In November, 1805, against the wishes of the Governor and the whole colony, Robert Henshaw, Custom Master of Bombay, was brought to trial, charged with accepting bribes to allow the export of grain during the famine of the previous year; evidence given earlier by clerks had implicated him only too clearly. Mackintosh's summing-up, which lasted over eight hours, showed the evidence to prove his guilt without any doubt; but the jury returned a verdict of 'Guilty, but not to the extent charged in the information'. When this was refused, they returned again to press for its acceptance; they did not return a verdict of guilty until the following day.⁽¹⁾

Mackintosh was insistent also on the crushing effects of the taxation imposed by the Company:

The constitution of the Anglo-Indian Government is founded in opposition to the most demonstrated principles of political science; and its measures are in perfect unison with its original principles. Within these two years a gabelle has been established in Malabar and Canara, as a fund to pay the salaries of the provincial judges. How can you object to a government taking a monopoly of the only luxury of the poor, when you consider that the government is founded upon a monopoly?... This government is too needy to listen to any proposal for mitigating the fate of their subjects; all that they can get is not enough for them. We have a bankrupt sovereign, and a people beggared by imposition. Yet so highly is this country favoured by nature, that the mere destruction of the monopoly would speedily remedy the greater part of these evils. (2)

1 The Whole Proceedings on the Trial of an Information exhibited at the instance of the Hon. the East India Company against Robert Henshaw Esq. Custom Master of Bombay for corruption in office and receiving presents in violation of the Act 33 Geo. III cap. 52. Tried by a Special Jury in the Court of the Recorder of Bombay on Tuesday, November 5 1805 and the three succeeding days before the Hon. Sir James Mackintosh Knt Recorder., Edinburgh 1807; J. Douglas Glimpses of Old Bombay and Western India, London, 1902, 220; Memoirs, I, 270-1.

2 Mackintosh to William Ogilvie, 24 February 1808. Memoirs, I, 381-6; also Mackintosh to Whishaw, 20 February 1808. N.L.S. MSS 2521 f135.

When a reform of the taxation system of Salsette, a neighbouring island, was suggested by Robert Rickards, a member of the Governor's Council, but a prominent opponent of the Company's monopoly: 'On Principles attempted to be deduced from the Laws of Nature and applied to the Revenue system of India', Mackintosh gave his backing to the plan, and to Rickards' later assaults on the Company in the name of the private trade interest.⁽¹⁾

But Mackintosh was not only a critic. Soon after his arrival he made it clear to the Governor that:

I am very desirous of trying an administration of criminal justice milder than any which has ^{hitherto} yet been attempted in any part of the British dominions. (2)

And earlier he had written to Sharpe that he was determined to occupy himself with:

the reformation of the police, of the administration of penal law, and particularly of the prisons; which, as I intend, if possible, to return to Europe with a bloodless serene, will be my principal instrument of punishment. I am bound to profess my gratitude to Bentham and Dumont, not only for the instruction which I have received from them, but perhaps still more for the bent which they have given my mind. (3)

Mackintosh nowhere discusses Bentham's philosophy of law in any depth; but he was acquainted with Bentham before going out to India.⁽⁴⁾

In 1806 he wrote to Dumont:

I never sit in a criminal court without being mortified by the consciousness how little I can do to apply his (Bentham's) forces. (5)

1 Mackintosh's remarks on Jonathan Duncan's 'Cursory Observations with respect to the System of Indian Finances, more particularly applicable to the Island of Salsette'. I.O.L. Erskine MSS.Eur. MSS D32 ff405-432; on Rickards see Nightingale Trade and Empire in Western India, 233-4, and Parliamentary Papers, 1812-3, X, 23-80.

2 Judicial Proceedings of Bombay, P397/38 ff1416-30.

3 Mackintosh to Sharpe, 14 August 1804, Memoirs, I, 215.

4 Bowring The Works of Jeremy Bentham, X, 403.

5 Mackintosh to Dumont, 18 December 1806, Bib.pub. et univ. de Genève, 33/3 ff1-3.

Clearly this inspiration, combined with his natural inclination had led him by this time to consider the field of criminal law as his major preoccupation; and here, although his zeal was sporadic, his work was not unproductive. By July 1804, the Recorder had already made his programme known in Court:

The facts were clearly proved, and the Recorder informed the Jury that it was their duty by their verdict to make known to the world, that men of every colour and race, and nation and religion in India, were, under the British laws, equally protected; that they equally enjoyed the natural rights of men and the civil privilege^s of British subjects; that the law was no respecter of persons, but would protect with as strong an arm the poorest wretch in the most despised cast of India as the proudest peer in the British ~~Empire~~. (1)

The Bombay Courier seemed to think this no empty rhetoric, since it commented that the prisoners were fortunate to have in their judge:

a most able advocate, for he most strenuously urged every point to the consideration of the jury, which bore at all in favour of the accused or which could tend to alleviate the degree of guilt with which they were charged. (2)

Mackintosh's two main objects in relaxing the law were to soften the law of imprisonment for debt, and to substitute other punishments for the death penalty:

...I hope I shall be able to give this system a fair trial notwithstanding the sneers of those who surround me, who, supposing that I can act only from constitutional good nature, see to think such a quality very much akin to folly when its objects have a black complexion. (3)

He was successful in raising the amount at which prisoners were committed to jail for debt from 3,000 rupees to 12,000 rupees, which

1 Bombay Courier, 21 July 1804.

2 Ibid.

3 Mackintosh to Dumont, 18 December 1806. Bib. pub. et univ. de Genève, 33/3 ff1-3.

had the effect of clearing the jail completely of prisoners, without any hostile reaction from the town.⁽¹⁾ Mackintosh did face considerable difficulties however; financially, the Court was entirely dependent for its establishment on the Governor and through him on the Court of Directors. Every request, for a pension for a pandit, an establishment for the coroner,⁽²⁾ or an adequate salary for the jailer,⁽³⁾ had to be despatched to the Directors in England; and even when they were accompanied by recommendations from the Governor, the Recorder's pleas were almost invariably turned down on the grounds of strict economy. In any case a state of rather friendly tension existed between the Court and the Governor's Council; and communication was infrequent.⁽⁴⁾

The suspension of the death penalty was a dangerous measure if the local jail could not engage at least to keep its prisoners secure; unfortunately it had just been built, so that Mackintosh had no excuse for embarking on a panopticon.⁽⁵⁾ After the escape of two prisoners, he made this point to the Governor:

The whole effect of mild punishments must depend upon its certainty, and if they can be very easily eluded they must become very easily contemptible. As the order of society must in all cases be maintained, the consequence must be that we shall be driven to more severe punishments. ⁽⁶⁾

Further precautions should be taken: a permanent guard, and a higher wall. Mackintosh was also well aware of the other deficiencies

1 Mackintosh to Lord Moira, 21 February 1805. Historical Manuscripts Commission, 76 Hastings III, 238.

2 I.O.R. Public Letters from Bombay, IV, f 203.

3 I.O.R. Public Letters from Bombay, IV f332; Judicial Letters from Bombay, I, f36.

4 Cf. the reference by a Member of Council to 'the extreme infrequency of correspondence between the Governor and the Court of the Recorder on any public subject'. Public Proceedings of Bombay, P344/32 f695, 1, 9 November 1810.

5 Jeremy Bentham was to be informed of this. Mackintosh to Sharpe, 29 June 1804. Memoirs, I, 210.

6 Jud. Procs. P397/38 ff1416-18, 25 October 1804.

of the prison, and suggested improvements, such as ventilation, that could be made for the sake of the prisoners' health.⁽¹⁾ For serious offences the only punishments were imprisonment, transportation, flogging or the pillory. For those offences which would normally have carried the death penalty, Indians were transported to Prince of Wales Island (Penang), and Europeans to Botany Bay; but transport was not easy to arrange, and Prince of Wales Island would take only a limited number of convicts.⁽²⁾ Although Mackintosh was naturally dissatisfied with these alternatives, he carried out his promise never to pass a sentence of death, with one exception - a European charged with the unprovoked murder of a native; Mackintosh entered in his journal:

if I had ^{been} to choose a case in which I should inflict capital punishment, it would have been the cruel murder of a mean Hindu by an English soldier. (3)

He was the first European to be executed in the colony for more than twenty years. In his last charge to the Grand Jury, in 1811, Mackintosh analysed the results of his attempt at a less brutal administration of the criminal law. Romilly had sympathised with his objectives:

I have been much interested ~~at~~ the account you give of the attempts you have made to ^{improve} ~~at~~ the administration ^{of justice} both civil and criminal in your colony & have felt great indignation at hearing how these attempts have been received. That endeavours at Reform and Improvement should not be popular in India is not surprising when they are very far from being popular here. They are considered by most ~~people~~ ^{people} with ~~jealousy and~~ indifference & by some with jealousy & alarm & even those who approve them are unfortunately much less zealous and active than those who resist them. (4)

1 Ibid.

2 Pub.Procs. P343/11 f. 200, 20 January 1804.

3 Memoirs II, 117, and B.M.Add. MSS 52438, 19 July 1811. He passed one other sentence of death in the knowledge that he would grant a reprieve. Memoirs, II, 16-7.

4 Romilly to Mackintosh, 22 June 1808, .M.Add. MSS 52451.

Reviewing his administration Mackintosh prided himself on two particular achievements; the introduction of a voluntary system of bankruptcy laws, an extension of his interest in the application of the laws against debtors, and the relaxation of the criminal code. Examining earlier criminal records, Mackintosh compared the average numbers of annual capital convictions in the years 1756 to 1763 with those of the years 1804 to 1811; he calculated that the number of capital crimes committed during the last seven years, during which no executions took place, was not much more than a third of those committed in the earlier period, in spite of a total of forty-seven executions taking place during those seven years. The deterrent effect seemed proved non-existent; certainly Mackintosh regarded his campaign for the reform of the criminal law as begun in Bombay.⁽¹⁾

The frustrations he met with, however, were due not only to the indifference of the authorities, but also to the legal confusion which reigned over his own jurisdiction. The geographical extent of this was still uncertain; one prolonged case with which he had to deal concerned a subject of the Peshwa at Poonah, and depended for its resolution almost entirely on the fluctuating political relations between that government and that of Bombay.⁽²⁾ There was the continually shifting population of Bombay to contend with; Mackintosh wrote to Dumont:

1 'A Charge delivered to the Grand Jury of the Island of Bombay, on the 20th of July 1811'. Works, III, 301-310.

2 Rutto bhoy v. Doolubdass Jud. Procs. P397/38 ff1393-6, 1441-68, 1582-6, 1614. P397/39 ff338-9. Cf. also Mackintosh's conversation with the Peshwa of Poonah on the subject, Memoirs, I, 287.

He whom we might have hoped to reform leaves us.
 He who is said to be deterred is a newcomer who has
 never heard of our penalties. This island, visited
 in succession by detachments of every part of the vast
 population of India, can no more be much affected
 by our penal discipline than a well could be kept
 fresh into which the sea flowed twice in the twenty-
 four hours. (1)

Eventually Mackintosh decided to withdraw the claim that the Recorder's
 Court could extend its jurisdiction in certain cases beyond the
 limits of the city. (2)

Equally uncertain was the law which had to be pronounced; even
 English law was not sacrosanct. In trying a European for forgery -
 a capital crime at home - he:

thought the Statute of Frauds not at all adapted to
 the commercial habits of the people. I thought that
 both on general principles and by the Charters I had
 some discretion without which indeed I must be guilty
 of constant & horrible injustice. (3)

He added:

that he would always feel the strongest disinclination
 to carry into execution in this country, laws which
 can be justified only by the peculiar circumstances
 of Great Britain. (4)

As for Indian law, Mackintosh, like Jones and many others, found it
 impossible to rely solely on the word of his native lawyer; one of
 his first requests was for a European interpreter. Originally he
 stated, transmitting a plea from the Grand Jury, that:

as long as the present interpreters continue, it is
 impossible for any judge to be sure that he does
 justice.

1 Mackintosh to Dumont, 18 December 1806. Bib. pub. et univ. de
 Genève. 33/3 ff1-3.

2 'These decisions will relieve the Government and the Courts of
 Adawlet from that risk of vexatious interference which they were
 subject to'. Judicial Letters from Bombay, I, f114. Despatch of
 14 April 1810. ^{authority of}

3 Mackintosh to Adam, 20 February 1805. Blair Adam papers.

4 Bombay Courier, 21 July 1804.

He suggested either the appointment of a European acquainted with native languages who would receive a good salary, or the employment of some of the Company's young men, or the education of some intelligent natives.⁽¹⁾ However, although the Governor agreed to these proposals, it did not prove so easy to find a qualified European ready to take on the post; after some searching Mackintosh appointed his secretary William Erskine, to take up the post after a further six months spent in the study of the language.⁽²⁾

In some ways Mackintosh shared the common English views of the Hindu peoples; in Whig eyes, however, their inferiority could be attributed to external causes. He saw the chief factor not as the Hindu religion, but the degrading rule of tyrants:

On ne peut être qu'affligé en voyant une si grande partie du genre humain si corrompue; mais quand on voit clairement les causes auxquelles cette corruption est due, on est un peu consolé. On cesse d'enrouver des sentimens hostiles contre une grande nation. On commence à détester la tyrannie et l'impotence qui ont abruties la postérité des fondateurs de la civilisation. (3)

His strictures on the Hindu character were sometimes made publicly in Court, as for instance, on a case of child murder:

The truth seems to me, as I observed to you on a former occasion, that the natives of India, though incapable of the crimes which rise from the violent passions, are beyond every other people of the earth addicted to these vices which proceed from the weakness of natural feeling, and the almost total absence of moral restraints. This observation may in a great degree account for that most aggravated species of child murder which prevails among them. They are not actively cruel, but they are utterly insensible. (4)

1 Jud. Procs. P397/38 ff1284-8, 14 September 1804.

2 Jud. Procs. P397/40 ff1566-70, 14 May 1805.

3 Mackintosh to de Gérando n.d. (before November 1805), Memoirs, I, 294-5.

4 Bombay Courier 19 April 1806.

This particular attack was denounced as offensive, by a Brahmin, in the columns of the Bombay Courier; Sancya Brahmin defended the natural affections of Indians; he censured Mackintosh for pronouncing judgment on a people so tritely, from the evidence of one case, and on a very short residence in the country.⁽¹⁾ The caste system, again, presented vast difficulties to an English judge; the higher castes had their own courts, or panchayets. Should a man acquitted of murder in an English court be allowed to be barred from his own caste, which had judged differently? Should an English judge condemn a man to degradation from his caste? Mackintosh wrote of his problems:

It would require columns to explain how the system of Indian society stands in the way of everything good & I shall perhaps one day endeavour to give this explanation at least in part. On the other hand it seems so unmanageable that no act can be extorted from it to the administration of justice. I found difficulties insuperable in degrading a convicted murderer from his Cast & after all he might have found means to be restored & if I were to condemn a man to any act which might expose him to forfeiture of caste I should be considered as a tyrannical invader of sacred usages as much by the whole people as by the criminal. I cannot discover that the superstition of this country renders any assistance to Morality & Society which before I came here I did not believe to be the case with the most abject of perverse superstitions. (2)

Even the activities of missionaries might be supported in the hope that they might help to break down the iniquities of the caste system.

The Court of the Recorder already enjoyed the services of its own pandit and maulavi, who pronounced on Hindu and Muslim law.⁽³⁾

1 Ibid., 19 July, 1806.

2 For instances of these problems arising, see: Jud. Procs. P397/49 f. 1682, and P397/50 f. 334; Mackintosh to Dumont, 18 December 1806 Bib. pub. et univ. de Genève, 33/3 ff1-3.

3 S.M. Edwardes Gazetteer of Bombay City and Island, II, 219.

Later Mackintosh set up a procedure by which, for a nominal fee, the pandit and maulavi were allowed to act as arbitrators in petty cases, which could then be settled very cheaply, and without going through the strict legal requirements of the court.⁽¹⁾ James Morley, a barrister of the court, to whom this regulation probably meant some loss of earnings, complained of it, and of the Recorder's administration generally, to Robert Dundas, now the President of the Board of Control.⁽²⁾ In his own defence Mackintosh replied that since the translation of digests of Indian law by Sir William Jones and others, there was no longer reason to fear the corruption of the native lawyers;⁽³⁾ the cost of a reference to them was never more than eight rupees, or sixteen shillings. Their arbitration was particularly fitting in cases of marriage, dower and adoption, and all disputes between members of the same caste:

The natives of India are extremely conciliated by marks of confidence thus shewn by European Courts to those who fill respectable & sacred offices among them. If indeed confidence be uniformly withheld from them, they never will seek to deserve it. On the other hand if by a cautious and gradual communication of some inferior and well-checked power to the leaders and teachers of the Indian community they are raised in their own estimation & in that of their countrymen there is no reason to apprehend that this confidence will not in process of time teach them those principles of integrity, and honour from which they will be forever alienated by coarse invective, by undistinguishing disgrace & by perpetual exclusion from all dignity & trust...I have had no cause to entertain the least

1 Rules and Orders of the Recorder's Court of Bombay. Sitting of 8 July 1809. Submitted to Dundas on 2 August 1810. I.O.R. H.M.S. 432 f208-9.

2 James Morley to Robert Dundas, 21 August 1809. H.M.S. 432 ff269-75. There are other letters of complaint from Morley in this volume. Mackintosh referred to him as a 'half-rad half-caste' who had circulated his letter to Dundas around the island. Mackintosh to Adam 16 October 1809, Blair Adam papers.

3 For a discussion of the digests compiled by Indian authorities for the use of English judges, see J.D.M. Derrett 'Sanskrit legal treatises compiled at the instances of the British', Zeitschrift für vergleichende Rechtswissenschaft. Bd 63, 72-117, Stuttgart, 1961.

suspicion of the integrity of the native lawyers & I can conscientiously affirm that I have already seen cases where irritable prejudice has been protected from the rough hands of a foreign law, where poor men have obtained Justice without being ruined by the costs of a Law suit & where domestic differences have been healed which a public litigation would have rendered ~~unbearable~~ ^{unbearable}. I have been assured of the beneficial effect of these references by the most respectable inhabitants of this island....As for me there is no part of my very humble exertions in the public service on which I shall look back with such pleasure as on this attempt to supply the poorer classes of the natives in Bombay with a mode of administering justice cheap, expeditious, & agreeable to their feelings. (1)

Mackintosh's attempts to grant the native population a reasonably accessible and fair means of obtaining justice were genuine, if occasional. It was, however, equally his concern to assert the power of his own court against that of the Governor-in-Council, who was almost entirely subject to the orders received from the Court of Directors. Whiggism, as Mackintosh saw it, could adapt itself to make use of the royal courts in a defence of the rule of law against the unchecked authority enjoyed by the Company. When the Court of Directors ordered one of the leading barristers in his own court home, he addressed a pointed remonstrance to the Governor:

The Great power enjoyed by the Court of Directors & by their Government in India places the Courts of Justice in a most helpless state. By the exertion of that power they may be stripped of every one of their officers at an Hour's warning without any reasons assigned. They have no means of resistance. The whole course of justice might then be suddenly and arbitrarily stopped and without proceeding to such an extremity a Court might easily be brought into a Contempt quite inconsistent with that character of independence and dignity essential to its usefulness. (2)

1 Mackintosh to Robert Dundas, 28 July 1810, H.M.S. 432 ff 301-17.
 2 Jud. Procs. P343/34 f. 34~~60~~, 14 December 1806.

He formed a plan for the improvement of the constitution of the Recorder's Court; this, he believed, should become a Supreme Court, as at Madras and Calcutta, each of these having two judges only. It should be possible to appeal from one court to another, and to change a trial from one Presidency to another, especially necessary in criminal proceedings against Europeans:

At present the Courts do and may differ in their law; indeed it is only by accident that, in a country without an open press, we can know anything of each other's judgments. (1)

It was especially necessary that a single judge should not have to bear the continual burden of decision. A Supreme Court was finally established in Bombay, in 1823, though many of the same problems remained.

An incidental illustration of Mackintosh's insistence on promoting the rule of law may be found in a case in the newly-constituted Vice-Admiralty Court at Bombay, of which he was appointed Judge in 1806. In this court Mackintosh was usually asked to adjudicate on the legality of prizes seized by British ships. The only case of special interest was that of the 'Minerva', an American ship taken in a voyage from Providence, Rhode Island, in the course of which she touched at the Ile de France (Mauritius), and sailed on to Manila, returning via Batavia; she was detained as trading between enemy ports in violation of the Instructions of 1803. Restitution was demanded by the owners, on the grounds that neither Manila or Batavia were colonies which were closed to foreigners in time of peace. (2)

1 Mackintosh to George Wilson, 26 July 1807, Memoirs, I, 272-3. Neither of the cases in which Mackintosh tried a European for corruption was reported in the press.

2 On the Instructions of 1803, see W.S. Holdsworth A History of English Law, XIII, 417.

Commissions were sent out to discover the truth of this; once it was proved the judge found for the owners. His summing-up has a certain curiosity value;

... though the officers in His Majesty's service were bound to obey these instructions, he did not conceive himself, sitting as a judge of prize, in a court whose decisions were to be regulated by the law of nations, as bound and concluded by them. He believed indeed that he was the first and only judge who had ventured to pronounce such a doctrine. In every prize court in every country, by all writers on the subject and all administrators of the law, the instructions of the sovereign were regarded as a law to the judge. But he considered the law of nations as paramount to such instructions; and the King as having indeed a right to dispense with such law, but not a right to extend it. As far therefore as any of His Majesty's instructions were a relaxation of the law of nations in favour of neutrals, he should consider himself bound by them; but if he saw in such instructions any attempt to extend the law to the prejudice of neutrals, he should not obey them, but regulate his decision according to the known and recognised law of nations. (1)

This decision caused some stir, among naval officers in the area, and in legal and political circles at home. Charles Grant, Director of the East India Company, was concerned that Mackintosh's judgment did not appear to meet with favour in his profession. (2) Mackintosh wrote to Sharpe, denying that he had spoken in 'the boasting and blustering manner ascribed to me', or as if making a discovery - nor had he pronounced the Instructions of 1803 to be illegal. He also did not believe that his political partialities could be deduced from the judgment; yet many of his Whig friends concurred in it. (3)

1 Bombay Courier, 19 September 1807. This must be one of the 'imperfect reports of the case published at the time' which R.J. Mackintosh refers to. Memoirs I, 319.

2 Charles Grant to Mackintosh, 29 April 1808. B.M.Add. MSS 52451. Grant's relation to Mackintosh appears to have been that of an old but disapproving friend. There was a Highland connection.

3 Mackintosh to Sharpe, 5 October, 1808. Erskine to Mackintosh, 1 May 1809. B.M.Add. MSS 52451. But in emphasizing that prize courts administered the law of nations Mackintosh followed the greatest legal authority of the age, Lord Stowell, who during the Napoleonic wars placed the prize laws of Britain on firm legal foundations. W.S. Holdsworth A History of English Law, I, 565, and XIII, 679-83.

Towards the end of 1810 Mackintosh again had to try a European for corruption. In a complicated affair, exciting the colony for some months, several natives were accused of an attempt to murder George Osborne, a young reforming official of the Treasury; the natives were tried, and disclosed evidence of a conspiracy to shield them from justice. Mackintosh, privately, and in Court, made it plain that the official suspected was the Superintendent of the Police of the Colony, C.J. Briscoe.⁽¹⁾ The eventual prosecution was due partly to the Recorder's insistence; he was backed by the Advocate-General at Bombay, though the Governor and other members of his council were firmly opposed to the trial; but on this occasion Mackintosh was backed by the leading inhabitants of the colony, and was publicly thanked by the Grand Jury after the trial was over.⁽²⁾ Briscoe was found guilty and sentenced to twelve months imprisonment.⁽³⁾ In reporting this to the Governor, Mackintosh took the opportunity to comment on the need for a reorganisation of the system of police at Bombay:

The confidence of the community in the Police has been so entirely shaken by the late Trials that I humbly conceive it is now become necessary to re-establish the system on permanent foundations. I think it is clear that the only mode of obtaining this object will be by collecting all the regulations of Police hitherto issued by Government, abolishing such as may be inconvenient, amending such as may require it, systematising, adding such new regulations as may seem necessary, and promulgating the whole in the manner and by the power vested in your Honourable Board by the late Statute of 47 George III. (4)

1 Pub. Procs. P344/31 ff6296, 30 November 1810; J. Douglas Glimpses of Old Bombay and Western India 9ff.

2 Entry in journal, 16 November 1810, B.M. Add. MSS 52437.

3 Ibid, 23 November 1810.

4 Pub. Procs. P344/33, 30 November 1810.

In acknowledging this letter, the Governor pointed out that he and his Council had for some months been considering the question; but they would welcome Mackintosh's reflections.⁽¹⁾

There was, however, another problem connected with that of the police in Bombay; what it hinged on was the combination of legislative, executive and judicial powers that the Company and its servants seemed to employ. At this stage - so near the date of the loss of the Company's monopoly - there was a substantial rift between the leading private merchants and their rulers. Constitutionally, this found expression in a move to assert the independent authority of the Bench of Justices. A change in the legal situation since Mackintosh's arrival at Bombay, the passing of the statute of 1807, had enabled the Governor to pass his own regulations on police and minor matters, without submitting them to the home government; it also gave him the power to appoint his own Justices of the Peace.⁽²⁾ The Bench was not disposed to concur in the total supremacy of the executive. Complaint was formally made to the Governor by the new Superintendent of Police that the Bench was disregarding the appointed High Constable, and was summoning and adjourning sessions without consulting the members of the government.⁽³⁾ This was referred for comment to the Recorder; in his opinion Mackintosh disclosed that he had already been approached by the J.P.'s for his view. The basic question, he laid down, was this:

Whether any Justice of the Peace except those who are Justices by virtue of their offices as members of government can summon, hold or adjourn General or Quarter Sessions within this island. (4)

1 Ibid.

2 Pub. Procs. P344/39, ff 1989, 2 April, 1811.

3 Ibid, f.2204, 13 April, 1811.

4 Pub. Procs. P344/39 f.2207.

Mackintosh argued that the coming of the Recorder's Court to Bombay in 1798 had changed the whole legal situation. Since the criminal jurisdiction of the Governor-in-Council had been automatically lost, so also had their control over the Bench. The statute of 1807 read:

the Governor and members of Council at Madras and Bombay are declared to have authority to act as Justices of the Peace and for that purpose they are authorised and empowered to hold Quarter Sessions ~~once~~ ^{four times} a year.

But this was an enabling rather than an imperative wording. The magistrates' meetings were legal, and they had the right to appoint and dismiss High Constables. He had a further observation to make, on the need for a separation of powers in the Colony:

on the subject of Policy I should speak to the Government with respectful deference and should probably be altogether silent if the subject were not that legal constitutional policy which is inseparably interwoven with law itself. If the Honourable Governor and the members of the council take a part in the ordinary duties of Justices of ~~the~~ Peace and in the acts of sessions, they subject themselves to the order and control of the Court of Recorder of Bombay, as inferior Courts and magistrates in England are by law subject to the order and control of the Court of King's Bench. It might perhaps flatter my vanity that persons so distinguished should voluntarily subject themselves to the jurisdiction of the Court in which I preside.

I submit ^{it} to the wisdom of the Honourable the Governor - in-Council whether such a voluntary subjection will tend to keep the Government in that high place which it ought to maintain. A Government best consults its honour when it confines itself to those great objects which are its proper province and when it leaves the care of minute arrangements to magistrates or officers selected on pure principles, animated to do well by the fullest confidence of their superiors and not only punished when they become criminal but dismissed as soon as they cease to be trusted. Acting on these firm and liberal principles a wise Government will keep aloof from paltry details as from the occasions of vexing ^{and} and degrading altercations... His Majesty's Principal servants have the power of Justices of the Peace but they exert them only on great occasions when for example a formidable conspiracy arises, the investigation of which ~~ought~~ ^{ought} not to be left to inferior magistrates. But they do not take

any part in the meeting or acts of the Justices of the Peace for the County of Middlesex. (1)

He also agreed with the Grand Jury that the tax which was imposed on the native inhabitants of Bombay should not be added to by demands for their personal services, which amounted to 'the tyrannical principle of conscription'. The representations being made against this by the heads of castes were justified.

This clash between the leading inhabitants of Bombay and the Governor was echoed in the discussions of police regulations that followed. The report on the police from the secretary to Government urged the retention of the office of Superintendent of Police and the supremacy of the Governor over the Bench of Magistrates.⁽²⁾ He touched on the flaw in any attempt to make the Recorder's Court the supreme legal authority; the Grand Jury was largely composed of those who also made up the Bench of Justices. The irregular powers recently assumed by the magistrates were most unwarranted, and 'fundamentally subversive of the dignity and authority of the Governor'. The allegiance of the Secretary was beyond doubt:

the existence of any subordinate authority that is likely, in the slightest degree, to derogate from the power and dignity of the Executive Government, I consider as dangerous to the Constitution of Colonial Government. (3)

Mackintosh acknowledged his shame at having been for so long aware of the irregularities of the police in the island; the trial of Briscoe had made it impossible for him to remain silent. Colonial jurisprudence had always raised difficult questions; but the lack

1 Ibid. f.2222-3.

2 Pub. Procs. P344/45 ff5592-5690. This report was drawn up on 20 October 1809 and read on 26 October 1811.

3 Ibid., f.5680.

of any representative assembly to take its rightful part in the legislative power was the glaring fault of the government of the East Indian colonies. He then, more relevantly, pointed out that the clause in the Charter of 1752, requiring the Governor to submit all police rules and regulations to the Court of Directors had never in fact been complied with - so that the Superintendent of Police had been for many years operating illegally. Once royal courts came to India:

the mode of passing colonial laws was rendered more analogous to the general principles of the English monarchy. The Power of the Crown was made a necessary part of the legislative authority. (1)

By analogy with the Court of Calcutta, the rules of the Governor-in-Council ought to have been registered in the Court of Bombay; since they had not been, the whole system of police before and after 1807 was illegal. Moreover, the Superintendent of Police had exercised a completely arbitrary jurisdiction, the subject of several protests from Grand Juries, and condemned as far back as 1779 as 'fit only for a despotic Government where a Bastile is at hand to enforce its authority'. The Superintendent sentenced an extremely high number of criminals, as compared to the Recorder's Court; he imposed punishments - banishment or hard labour in chains - which could not by law in England or India be imposed by summary conviction; a high number of criminals were released, arbitrarily, before their sentence was completed.

1 Ibid. ff. 5691-5788. James Mackintosh 'Report on the condition of the police in Bombay and draft of articles' n.d. Read 26 October 1811. These reports are printed in W.H. Morley. An Analytical Digest of all the Reported Cases decided in the Supreme Courts of Judicature in India, and in the Courts of the Hon. East India Company and on appeal from India by Her Majesty in Council, 2 vols., London 1851, II, 455-545.

Mackintosh proposed that the Government should ensure the legality of its police regulations by transmitting them through the Recorder's Court. The chief feature of the new police system should be the constant attendance of the magistrates to their duties, and the vigilance of police officers; but all undue interference with the liberty of the citizen should be avoided. London, with its minimal police force, had a remarkably low crime rate:

instead of admiring the tyrannical Police of Paris I reserve my admiration for the well-regulated liberties of London which by teaching morality and independence prevents crimes far more effectually than vexatious restrictions can do, and where such perfect security is maintained with so little restraint and so little punishment. (1)

Such was the spirit against which Sir Robert Peel had to struggle. Mackintosh recommended the abolition of the office of Superintendent of Police, and proposed that three stipendiary magistrates should be in constant attendance, but should not try criminals singly. At a Petty Sessions, two stipendiary magistrates and one J.P. could see justice done. He enclosed a copy of the regulations which he had drafted on the duties of the magistrates, and the nature of the offences which would come under the jurisdiction of the Petty Sessions; his aim, in drawing these up, had been to codify rather than to innovate. (2)

Surprisingly, the report of the Recorder was favourably received by the Governor and accepted almost in its entirety. His drafted

1 Pub. Procs. P344/45 f. 5729.

2 Among the duties of the magistrates was to be the compiling of an annual register of births, marriages and deaths. 'It is a disgrace to so enlightened a nation as Great Britain that the first tables of that kind from a tropical country have been collected by a German traveller in the American dominions.' (Mackintosh was referring to the work of Alexander von Humboldt). Ibid. f. 5740-1.

regulations passed into law in 1812.⁽¹⁾ The office of Superintendent was never revived.⁽²⁾ It does not appear that the new regulations were particularly successful in keeping the peace in Bombay - but then that was not Mackintosh's primary concern. It will have been seen that all these minor issues relating to the internal structure of the Presidency of Bombay were discussed in terms applicable to current politics, and that Mackintosh's line was that of the most orthodox Whiggism in a peculiarly unorthodox setting. The separation of powers and a balanced constitution, respect for the liberty of the individual and a humanitarian approach - all are implicit in his single-handed administration of royal justice. Most of all, of course, his was a fight against what he regarded as the tyrannical power of the East India Company; he was not an enthusiastic imperialist, nor did he think that Britain's rule in India would last. Once back in England, much of his energy was devoted to mobilising opinion against the Company;⁽³⁾ but the rule of this once despotic private monarch was already doomed.

II The President of the Bombay Literary Society

Although Mackintosh began to take an interest in oriental studies soon after his arrival in Bombay, he was concerned also to keep up with contemporary developments in philosophy and literature; in both fields his reading went far beyond the normal French and English

1 Pub. Procs. P344/49 f. 796ff, 25 March 1812. Regulations passed by the Governor-in-Council of Bombay from the year 1799 to 1816 inclusive, also Police Regulations denominated Rules, Ordinances and Regulations from their commencement in the year 1812 to 1816 inclusive, London 1822.

2 In 1825 Mackintosh was given a handsome tribute by a successor, Sir Edward West, for having begun, in Bombay, that reform of the criminal law for which he was still working; though West was critical of the slightness and superficiality of the draft regulations. F. Drewitt *Bombay in the Days of George IV*, 190.

3 Mackintosh to Holland, 27 December 1812, B.M.Add. MSS 51653; Lansdowne to Mackintosh, 28 December 1812, and Grey to Mackintosh, 2 January 1812. B.M.Add. MSS 52452; Mackintosh to Grey, 25 December 1812. Grey Papers, University of Durham.

pattern. On the four months voyage from England to India, he had occupied himself with learning German, acquiring sufficient command of the language to be able, a year later, to embark on the philosophy of Kant.⁽¹⁾ It seems that he was, around this time, considering writing a book 'On the Principles of Morals', but concluded that without further knowledge of German writers any such work would be incomplete.⁽²⁾ In March 1805, he began to read Reinhold's Letters, 'a book which has the reputation of being the easiest introduction to the Kantian philosophy';⁽³⁾ he was one of the first men in England to undertake such systematic study - certainly he was far ahead of Dugald Stewart, to whom he wrote of his work.⁽⁴⁾ Friedrich von Gentz wrote of him as having 'eine unbeschreibliche Sehnsucht nach deutsche Literatur'.⁽⁵⁾ Mackintosh spoke of his own 'restless desire of thoroughly mastering the accursed German philosophy'; although at the outset he shared the normally derogatory view of most Englishmen, he came to admire and respect the very different genius of Germany.⁽⁶⁾ He did not confine himself to philosophy; by 1808 he was writing to Lord Holland:

I extend my terms of communion still further. I comprehend even Goethe and Schiller within the pale and though I know that few either in ~~England~~^{France} or ~~France~~^{England} agree with me I have recourse to the usual consolation of singularity that my opinions will be more prevalent when I am myself forgotten. (7)

1 Memoirs, I, 204.

2 'At present I intend to begin a Journal of my studies, in which my first object is to understand the theoretical morals of the Germans, which I conceive to be a necessary preliminary to my own work! Journal 26 March, 1805. Memoirs, I, 243.

3 C.L. Reinhold Briefe uber die Kantische Philosophie, 2 Bde Leipzig, 1790-2.

4 R. Wellek Immanuel Kant in England, Princeton, 1931, 40-1 and 49-51.

5 Gentz to Bottiger, 15 May 1805. Wittichen Briefe von und an Friedrich von Gentz, I, 285.

6 Memoirs, I, 234, 260 and 340.

7 Mackintosh to Lord Holland, 27 February 1808. B.M.Add. MSS 51653.

By the end of his stay in India, he had read also some of Fichte, and another early work on Kant, and much else besides.⁽¹⁾ He aimed also at a thorough examination of the works of other philosophers, whom he had not previously read: in particular, Spinoza.⁽²⁾ On the voyage home, he was reading, very carefully, the works of Thomas Reid, Dugald Stewart, and Adam Ferguson.⁽³⁾ His journals are full of lengthy comments and notes on his very extensive reading; but this plan seems to have kept him from writing anything of worth himself. At the same time, he had a constant supply of literature, reviews, and newspapers from England, and kept up his correspondence with his many friends at home.

But besides this work, he planned to enter into a completely new field of studies - the history, literature, and languages of India. Mackintosh had disclaimed the possession of 'an atom of Jonesian superstition about the East', yet he did not disdain Oriental studies as a means to 'philosophical' knowledge:

All that I mean to do is, to tell others what they are to pursue, why they ought to seek it, and how they will best attain it. The comparative value of different parts of knowledge, the intrinsic value of each and the rules for its successful cultivation, are discovered, estimated, and taught by Philosophy. To contemplate Oriental matters in this point of view, is not to be an Orientalist, but a philosopher. ⁽⁴⁾

The means which he chose to accomplish this end was the Bombay Literary Society, which he founded, and was elected President of, on 26 November

1 Memoirs, I, 353, and 363; Mackintosh read J.G. Fichte Die Grundzuge des gegenwartigen Zeitalters. Dargestellt in Vorlesungen in Jahre 1804-5. Berlin 1806, and J.G.C.C. Kiesewetter Versuch einer fasslichen Darstellung der wichtigsten wahrheiten der neuen Philosophie fur Uneingewechte, 2 Bde Berlin 1795 and 1803.

2 Memoirs, I, 244 and 321.

3 Ibid., II, 152, 243; B.M.Add. MSS 52440.

4 Mackintosh to Sharpe, 24 February 1805; Ibid., I, 233.

1804. In 1784 Sir William Jones had founded the Asiatick Society at Calcutta; this event is generally recognised as a milestone in the history of Oriental studies. It has also been pointed out that Jones was seeking to extend the inductive methods of Bacon to his own field, and to realise Ferguson's ideas on the study of man and society.⁽¹⁾ Mackintosh had no intention of himself becoming an orientalist, but he did hope to follow Jones' example in the stimulation of studies on every aspect of Indian life and culture.⁽²⁾ It is very clear from his discourse at the opening of the Bombay literary society that this was at the forefront of his mind. He praised the work of Sir William Jones;⁽³⁾ at the same time he emphasized that his own inquiries were to concentrate on more strictly 'philosophical' lines, in both the physical and the moral sciences. Among the physical sciences were included natural history, mineralogy, botany, climate, and medicine; in each, experiment might lead to further generalizations. Mineralogy, for example, could contribute to:

the ambitious projects of those philosophers, who from the arrangements of earths and minerals have been bold enough to form conjectures respecting the general laws which have governed the past revolutions of our planet, and which preserve its parts in their present order. ⁽⁴⁾

The moral sciences would deal with the past and present condition of the natives of India. Mackintosh's first suggestion was that a kind of research should be undertaken which had been much neglected:

1 S.N. Mukherjee Sir William Jones. A Study in Eighteenth Century British Attitudes to India, Cambridge 1968, 83.

2 Mackintosh to Charles Butler, 16 January 1809. Memoirs, I, 444-5.

3 'A Discourse at the Opening of the Literary Society of Bombay'. Transactions of the Bombay Literary Society, 3 vols., London, 1819-23, I, xiii

4 Ibid, xvi. In 1805, the society requested permission to hold a lottery to raise money for a library, 'Philosophical Instruments', and the erection of an observatory. Public Letters from Bombay, I, f. 545, 31 May 1805.

the investigation of those facts which are the subjects of political arithmetic and statistics, and which are a part of the foundation of the science of political economy. The numbers of the people; the number of births, marriages and deaths; the proportion of children who are reared to maturity; the distribution of the people according to their occupations and casts, and especially according to the great division of agricultural and manufacturing; and the relative state of these circumstances at different periods, which can only be ascertained by permanent tables,—are the basis of this important part of knowledge. (1)

The study of 'political arithmetic' should be followed by work on all aspects of the country's economy: public wealth, wages, prices, commercial profits, landholding, foreign trade, and the laws and customs governing all these. To test the application of the principles of political economy in India would surely help to prove their universality.

In putting these ideas into practice Mackintosh began a statistical survey of Bombay; he published a questionnaire which included queries on the geology, botany, climate and diseases of the colony. Under the heading of 'political arithmetic' came questions on its population and employment. Information on the early history of the island, on its religious groupings, and on the changes brought about by successive European governments was also required.⁽²⁾ No answers were received to these questions, except from some of the native police officers, and the priests of the native Christians. But from the burial returns of 1801 to 1808 Mackintosh succeeded in assembling tables which were of considerable use in estimating the population of Bombay at this period; he was able also to give separate tables

1 Transactions of the Bombay Literary Society, I, xix.

2 'Queries; to which the answers will be contributions towards a statistical account of Bombay'. Ibid, I, 305-8.

on the Muslim, Parsee, and native Christian populations. In commenting on these, he was careful to discount possible inaccuracies, and to explain puzzling anomalies. He found that one positive result was to prove that polygamy was hardly practised at all in Bombay - this, he believed, augured well for the possible improvement of its society.⁽¹⁾

His friends in England were particularly interested in this project. Francis Horner was fascinated by the possibilities of such a survey; he had been asked to help supply some of the statistical queries. His particular interest was in the economic life of the colony, and its significance for the European student of price movements:

I wish to arrive at a sort of inductive conclusion from a comparison of remote facts, respecting the recent variation in the value of the precious metals, all over the world. If you can furnish me ~~some~~ details enough to give me a sort of oriental tinge to my illustrations, I will humbly offer you a little essay for your Infant Society, where I observe that Statistics and Political Economy are to be encouraged. I hope you will infuse your own spirit into the mass which they are to collect for you about Bombay and Salsette; and that you will direct them to include as much as possible the details of former times as well as the present. A statist does nothing for philosophical economy, unless he ascertains and describes changes and such relations among his details as are matter of fact. (2)

Mackintosh had at one time considered writing a history, or possibly a statistical survey, of India; he obtained from the East India Company permission to use all the records that he might need for this important work, on which it seems, he never began, partly because

1 Ibid, xxv-xxix. Compare Mackintosh's insistence on the need for statistics in his remarks on Jonathan Duncan's 'Cursory Observations on the system of Indian finances'. I.O.L. Erskine papers. Eur. MSS D32 ff78-80.

2 Horner to Mackintosh, 25 September 1805. Memoirs and Correspondence of Francis Horner, I, 310-15. See also Horner's letter of 8 April 1805. Ibid, I, 291-7.

the questionnaires which he sent out were never returned.⁽¹⁾

The same method was to be used in a rather different cause: philology. In 1806 Mackintosh published his Plan of a Comparative Vocabulary of Indian Languages.⁽²⁾ The science of philology had made some progress before the end of the eighteenth century; although Sir William Jones was not the first to discover the affinity between Sanskrit and Latin and Greek, he was responsible for making this widely realised.⁽³⁾ But his place in the developing philosophy of language is more significant still. Orthodox eighteenth century thought carried as a corollary a theory of language which was authoritatively interpreted by Horne Tooke in his Diversions of Purley.⁽⁴⁾ Tooke's theory was dependent on the sensationalism of Locke and Condillac; language was originally an aggregate of isolated signs, derived from sense impressions of substantive objects, and subsequently abbreviated for communication. The different 'parts of speech' were reducible, by etymology, to nouns and verbs - though Tooke never quite faced the ultimate problem of the origin of language: whether the primary part of speech was a noun or a verb. His combination of philosophy and philology was immensely influential in England; it delayed by some twenty years the coming of the more rigorous German philology.⁽⁵⁾

1 ¹ 'Being informed that Sir James Mackintosh, Recorder at Bombay, has conceived the design of compassing a work² entitled 'The History and present state of the British Dominions in India', on the plan of excluding antiquarian research, as well as uncertain or merely curious disquisitions, and seeking to supply what is now a desideratum in Oriental literature, a summary of useful information adapted to the present time concerning our possessions and affairs in the East'... the Company very willingly allowed Mackintosh the use of their records. See also Public Letters from Bombay, I, f243; Public Proceedings of Madras P243/10, 3 September 1806; Mackintosh to Lord Minto, 31 July 1807, N.L.S. Minto papers M139.

3 Mukherjee Sir William Jones, 96.

2 Bombay 1806.

4 2 vols, London; the first volume was originally printed in 1786, and reprinted in 1798, the second in 1805.

5 H. Aarsleff The Study of Language in England, 1760-1860, Princeton 1967. Chs. II and III; E. Halévy The Growth of Philosophic Radicalism, 445-6.

This, the decisive turn in the study of language, abandoned the a priori methods of the eighteenth century for the historical, a posteriori view of the evolution of language. It has been recently argued that Jones, rather than Friedrich Schlegel, and later German scholars, should take the credit for the first introduction of a historical and scientific attitude to philology.⁽¹⁾ One of the very few in Britain to have taken some account of his work was Dugald Stewart, who in 1810 published an essay, 'On the tendency of some late Philological Speculations'.⁽²⁾ It is necessary to see Mackintosh's own speculations in the context of these developments; although he was in every way an amateur in the science of language, his interest in its changing philosophy was by no means insignificant. In 1805, on reading Horne Tooke's second volume, he was, of course, extremely impressed by his elucidation of language; but he questioned what he regarded as Tooke's annihilation of metaphysics:

Why should not the words 'necessity', 'identity', &c, and a thousand others, be the subject of operations = of translation and retranslation, as much, and with a degree of the same success as algebraic signs? Because all numeration may be traced to sensible perceptions, it does not follow that we must count by the fingers, instead of resorting to the rules of arithmetic. This is to confound a science with its practical methods. (3)

Five years later, on reading Dugald Stewart's work, he remarked:

The substance of what he says on Horne Tooke in the 4th Essay was anticipated by me in my Journal on the perusal of the second vol. of the Diversions of Purley at Bombay. (4)

1 Aarsleff op.cit Ch. IV 'Sir William Jones and the New Philology'.

2 The Collected Works of Dugald Stewart. Edited by Sir William Hamilton, 11 vols., Edinburgh, 1854-60, V, 149-88.

3 Entry in MSS Journal for 13 November 1805. B.M.Add. MSS 52436. Printed out of place in the Memoirs, II, 236.

4 Entry in MSS Journal, 16 November 1811, B.M.Add. MSS 52440.

It was clearly no coincidence that Mackintosh was inclined to think in Stewart's terms. In the Plan of a Comparative Vocabulary, moreover, the approach was on the whole both historical and comparative. He took a list of basic words from a Russian, who, under the direct patronage of Catherine the Great had collected a basic one hundred and thirty words in two hundred different languages.⁽¹⁾ The work was a rare one, and written in Russian characters, which to Mackintosh did not seem well-adapted to represent the phonetics of so many different languages. Although the volume promised by the same author, P.S. Pallas, on the languages of the American continent had not appeared, Mackintosh suggested that the answer might come from the work of Dr. Benjamin Smith Barton, Professor of Natural History at Philadelphia; it is interesting that Dr. Barton was a student of the University of Edinburgh during Mackintosh's years there, and was a prominent member of the Royal Medical Society at the time that Mackintosh was President. The only article that he, as a naturalist and physician, had published on language was in the form of a letter to Thomas Beddoes, another Edinburgh graduate, and member of the Wedgwood circle.⁽²⁾ The connection is perhaps not significant; but comparative philology was a very natural consequence of the comparative study of society prescribed at Edinburgh.

1 Plan of a Comparative Vocabulary 3-5; P.S. Pallas Linguarum totius orbis vocabularia comparativa, Sect. I, pts 1 and 2. Petropoli, 1786-9

2 W.P.C. Barton A Biographical Sketch, read...before the Philadelphia Medical Society..., 16th February 1810, of their late Professor Barton. (Philadelphia, 1816). 9-12; Dr. Barton published his article, which was read on 21 October 1803, 'Hints of the etymology of certain words and on their affinity to words in the language of different European, Asiatic and American (Indian) nations in a letter to Dr. Thomas Beddoes', in Transactions of the American Philosophical Society, VI, 1809, 145-158. On Barton's linguistic studies, see D. Boorstin The Lost World of Thomas Jefferson, Boston, 1960, 78-80.

Mackintosh's aim was to illuminate the relationships of the many different Indian languages, and their relationship to Sanskrit, in the same way as it was possible to study the group of European languages which derived from Teutonic. It was important to take some account of the historical development of the language:

Sanscrit may have been the ancient vernacular speech of all India, from which all her modern dialects are derived. It may have been the speech of one district, which being more cultivated and polished, was adopted as the written, though not as the vulgar language of all the other provinces...It may have been the language of learning and refinement throughout India, insensibly formed out of the analogous spoken dialects which it left in undisturbed possession of vulgar use...It may have been the speech of a conquering nation which imposed its law and religion on the vanquished, and imparted to them a great portion of its language. (1)

But in default of the necessary historical knowledge, the surest method was that of strict etymological analysis. No doubt the plan was inspired by the reading of Tooke's latest volume; and Mackintosh certainly followed his lead in discarding the 'particles' of speech from his lists of words.⁽²⁾ Yet Mackintosh's study of philology was directed towards historical rather than philosophical ends; languages were for him, as for Sir William Jones, 'a means towards historical knowledge, but not themselves the end'.⁽³⁾ Moreover this brief plan did not indulge in any unfounded speculations on language; it was intended merely as an introduction to an empirical survey of the languages of India. Mackintosh printed the Empress Catherine's vocabulary, with another two hundred and fifty words added, and sent copies of this vocabulary to the different governments of British

1 Plan of a Comparative Vocabulary, 7.

2 Ibid., 21.

3 Aarsleff The Study of Language in England, 126.

India, requesting them to forward the lists to the judges, collectors, commercial residents, and magistrates within their territories.

The lists, when filled in, in the language or dialects of the districts, were to be returned to him.⁽¹⁾ He was disappointed to receive very

few replies, and, when Lord Minto became Governor-General reminded him of his request for governments to act; although he had in every case received polite acknowledgements, no completed plans had been returned to him, and he had not heard from the former acting Governor-General, Sir George Barlow.⁽²⁾ He had received considerably more

help from private friends, and particularly from Mountstuart Elphinstone, then Resident at Nagpur, and a Lieutenant Irvine, also a 'Scotch feebsofer'.⁽³⁾ In spite of the difficulties a number of the vocabularies

1 The Bombay government distributed the plan as requested. Pub. Procs. P343/33 f. 3281. 29 June 1806. For Madras, see Mackintosh to Lord William Bentinck, 29 June 1806, Pw Jb 25, and Bentinck to Mackintosh 29 July 1806, Pw Jb 727, Bentinck papers, University of Nottingham. For Bengal, see Bengal Public Consultations P6/30 f. 8380, 7 August 1806. The plan was there forwarded to the Political Department, the Military Department and the Revenue and Judicial Departments, for them to circulate it around the appropriate officers. It was also sent to Captain Wilford, a noted authority, and to the Council of the College at Fort William.

2 Mackintosh to Minto, 31 July 1807. N.L.S. Minto papers, M139.

3 For Mountstuart Elphinstone's work in collecting these vocabularies, see the many entries in his MSS journal. I.O.L. Eur. MSS F88 Box 13F(d), for November 1806, ff 76-90. Also Elphinstone to Erskine n.d. I.O.L. Erskine papers. Eur. MSS D29 ff13-19; Elphinstone to Mackintosh, 11 May 1811. B.M.Add. MSS 52452; Sir E. Colebrooke The Life of the Right Honourable Mountstuart Elphinstone. 2 vols., London 1884, I, 150 & 331.

Lt. Francis Irvine of the Bengal Native Infantry, later accompanied Elphinstone on his mission to Cabul, when Mackintosh wrote of him as a 'Scotch Feebsofer who came, to India to philosophise on manners, & who has drawn up a Physical, and Philosophical ^{seat of} ~~account~~ of the characters of the tribes of this vast country, to which I know nothing equal but Volney.' Mackintosh to Whishaw 13 August 1811. B.M.Add. MSS 52452. According to Mackintosh, who read the work in manuscript, it was Irvine who wrote the first volume of Elphinstone's Account of a Mission to Cabul. Entry in MSS Journal 13 April 1811. B.M.Add MSS 52438. Irvine appears to have heard by chance of Mackintosh's plan, and, since he was working on the affinities of the Gypsy and Hindu languages, was sufficiently interested to send Mackintosh and William Erskine a number of vocabularies. Irvine to Mackintosh 10 August and 20 December 1807, 20 May and 16 August 1810, and to Erskine 2 October 1809, and 25 January 1810. B.M.Add. MSS 26 605, f33ff. Irvine also contributed several papers to the Bombay Literary Society, and to the Asiatick Society. There is further information on this in the Minto papers; in 1812 he applied to Lord Minto for financial assistance in the writing of his philosophical history. Minto papers. M503.

were gradually collected; but no printed work was ever produced, and before Mackintosh's departure from India, the materials were turned over to Dr. John Leyden, now an orientalist of some repute, attached to the College of Fort William in Bengal. Leyden, however died in 1811; the collections of comparative vocabularies are still among his papers.⁽¹⁾

However, Henry Colebrooke, the Professor of Sanskrit and Hindu law at the College, who was to become one of the leading Oriental scholars in Europe, had also taken an interest in Mackintosh's work. Asked for his opinion, he judged the work far too limited in scope, since he believed that the minimum number of words necessary for understanding the basis of a language was 2,500. Dr. Leyden had had in mind a very comprehensive plan for the compilation of grammars and dictionaries in several languages.⁽²⁾ Colebrooke thought this hardly practicable, but wanted himself to bring out a planned vocabulary which would occupy a halfway position. Meanwhile the Recorder's plan was to be reprinted and despatched to local officers.⁽³⁾ By March 1808, under Colebrooke's patronage, 480 copies had been reprinted, and were sent out not only to the states under the rule or protection of Bengal, but also to the Resident at Delhi, who was instructed to extend his inquiries to Cabul, Kashmir, and as many of the neighbouring states as possible.⁽⁴⁾

1 B.M.Add. MSS 26 604-5. For views of Leyden as a romantic poet of India, see G.D. Bearce British Attitudes towards India, 1784-1858, Oxford 1961, 114-5; R. Schwab La Renaissance Orientale, Paris 1950, 212.

2 At this stage Leyden still had his own plan in mind; the appearance of Mackintosh's work prompted him also to address the Governor-General. Leyden to Sir George Barlow, 7 January, 1807. B.M.Add. MSS 26 566.

3 'Extract from the proceedings of the College Council, at Fort William, including a minute on the plan circulated by Colebrooke, on 15 December 1807. Bengal Public Proceedings P7/3 29, January 1808. Nos. 49 and 50; H.T. Colebrooke Miscellaneous Essays With a life of the author by Sir T.E. Colebrooke, 3 vols. London 1873, I, 228-9.

4 Bengal Public Proceedings P7/7 No. 34, 1 April 1808.

In 1828, Wilhelm von Humboldt was asked to give his opinion on Mackintosh's plan; the development of philological studies in the intervening years had of course been very great. The merit of the plan in 1806 was acknowledged:

It possesses (like everything which comes from the pen of that ^(infinite) ~~great~~ and ^{infinite} ~~ingenious~~ writer) the highest interest; and the ideas which are so luminously developed in it have the more merit, if we consider that at the period when this memoir was published, philosophical notions on the study ^{and study} of languages were rarer and more novel than they are at present. (1)

However, he felt that in the form presented by Mackintosh, only a very imperfect idea of each language could be gained; what was necessary was a thorough and profound knowledge of each individual language, before comparative methods could have any value. And:

The method of comparing a certain number of words of one existing language with those of several others, has always the two-fold inconvenience of neglecting the grammatical relations, as if the grammar was not as essential a part of the language as the words; and of taking from the language which we wish to examine isolated words, selected, not according to their affinities and natural etymology, but according to the ideas which they express. (2)

The critical methods of German philology could have little use for what seemed too clearly a hasty and superficial application of comparative methods in a field which Mackintosh himself never attempted to master. Mackintosh had gone a short way towards rejecting Tooke's universal grammar; but he had never understood the full force of the historical approach to language. Yet his efforts were not

1 W. von Humboldt 'An Essay on the best means of ascertaining the affinities of Oriental Languages. Contained in a letter to Sir Alexander Johnston'. Read 14 June 1828. Transactions of the Royal Asiatic Society of Great Britain and Ireland, II, 213. The essay was written as a comment on Mackintosh's plan, sent to him by Johnston.
2 Ibid, II, 215.

completely unproductive. Humboldt had pointed out that:

There do exist, however, some works such as that Sir James calls for, not to mention printed books. I have myself seen in the library of the East India Company a MSS collection of Sanscrit words, compared in great number with those of the other languages of India, made under the direction of Mr. Colebrooke. (1)

Colebrooke acknowledged, in a footnote to Humboldt's essay, that the work which was mentioned 'was undertaken by me in furtherance of the views developed by Sir James Mackintosh. (2)

Mackintosh made other suggestions for the promotion of Oriental studies; in a letter to the President of the Asiatick Society (of Bengal), in 1806, he suggested that a general fund should be set up to finance the translation of some of the principal works in Sanskrit; this would help those primarily interested in the science of society, rather than orientalists:

The full execution of this project will add a new department to the Library of the Poet, the elegant scholar, the enquirer into manners, into the origin of nations, & the progress of society, of the speculator on the first principle of knowledge, on the structure of the human mind, & on the Revolution of opinion without compelling them to add a new language to the many & ancient living Dialects by the necessity of acquiring which they are already overwhelmed. (3)

On receiving the letter the Asiatick Society resolved to publish a series of translations to be known as the 'Bibliotheca Asiatica'; but no action beyond a few private grants was taken until 1847. (4)

1 Ibid, 214.

2 Ibid, 221n.

3 'Letter from the President of the Literary Society of Bombay to the President of the Asiatick Society', 24 February 1806. Transactions of the Bombay Literary Society, I, 309-12.

4 Asiatick Researches XIII, 1820 Appendix, xviii; The Centenary Review of the Asiatic Society of Bengal from 1784 to 1883. 4 pts. Calcutta 1885, Pt. I, 55-6.

Mackintosh's knowledge of India was not confined to the Presidency towns; he was able also to visit some areas seldom seen by Europeans. In 1805 he was invited to visit the Peshwa at Poonah, the Mahratta capital; as a distinguished visitor he was welcomed in state, and found the experience most impressive.⁽¹⁾ In 1808 he made an excursion into the Deccan, to see a friend at Hyderabad, and from there examining the remains of some of the capital of the old kingdom of the Deccan; many were remote and very rarely visited by Europeans. Mackintosh was nevertheless received in some splendour by the native princes and officials, and was provided with large military guards for his journeys through their insecure territories.⁽²⁾ This tour was completed two years later, when he was able to see the north part of the Deccan, including Aurungabad, the ancient city of Aurungzebe, the Moghul Emperor.⁽³⁾ Moreover, he never lost an opportunity of talking to Brahmins, or other learned men, on the subtleties of Hindu philosophy.⁽⁴⁾ The exact nature of the idealism of the Hindus was a question which English writers generally discussed with exclusive reference to Berkeley; such a comparative problem fascinated Mackintosh also:

I wish I could tempt Mr (Adam) Muller to come and spend a year or two with me here, in exploring those systems of idealism which seem to have been taught in India twenty centuries ago. I have only begun the Sanscrit, one of the most difficult of all languages, which, however, is the only key to the vestibule of the vast edifice of Indian learning. The vedanti system, which is the prevalent doctrine of the learned, is a pantheistic idealism, not wholly dissimilar to the doctrine of Schelling, if I have any glimpse into this last. (5)

1 Memoirs, I, 274-88.

2 Ibid, I, 450-99.

3 Ibid, II, 64-78.

4 Ibid, I, 281, and 393.

5 Mackintosh to Gentz, 24 December 1806, Memoirs, I, 305.

Mackintosh disagreed with Dugald Stewart's judgment that such idealism had nothing in common with that of Berkeley:

They are far from saying only that the material universe is dependent on the deity or every moment reproduced by his power, according to ^{the language of} some European mystics. They consider the Perceptions as the immediate and the only produce of Creative power. (1)

It was on Mackintosh that de Gérando relied for his account of Indian philosophy in the second edition of his comparative history of philosophy; it appears that Mackintosh had sources for this study which he did not make generally known. One writer on the history of orientalism has quoted and shown the implications of this correspondence:

'Mackintosh...a obtenu de la confiance que lui ont accordée quelques-uns d'entre eux (the Brhamins), d'être initié dans les opinions les plus secrètes, qui se transmettent dans le premier ordre des adeptes. Il a été fort surpris d'y retrouver un idéalisme à peu près semblable à celui qui a été introduit en Allemagne au commencement de ce siècle, par Fichte et Schelling; dans une lettre extrêmement intéressante, qu'il nous écrivit alors de Bombay et que nous avons communiquée dans le temps à diverses personnes, il a bien voulu nous exposer en détail ce curieux système que sans doute il publiera lui-même quelque jour, et que par ce motif nous nous interdisons de reproduire ici'. On voit combien immédiates étaient les confrontations. Tout au début de siècle, un philosophe français correspond avec les indianistes anglais au sujet des doctrines indiennes; il en parle à ses amis, parmi lesquels ne sont pas seulement les 'idéologues' mais et Ballanche et Cousin, tous deux diversement mais sûrement attentifs à la pensée hindoue. Entre celle-ci et la métaphysique post-kantienne une évidente parenté était déjà établie... C'était vraiment une préparation prodigieuse, que l'Allemagne, qui déjà faisait avec sa philosophie de l'histoire le lit d'une Inde à venir, y eut ajouté ces nouvelles écoles d'idéalisme les mieux faites pour la recevoir. Voilà où la conjonction de l'indianisme avec la romantisme apparaît le plus clairement comme une des rencontres privilégiées de

1 Entry in MSS Journal, 15 November 1810(?). B.M.Add. MSS 52440. Mackintosh was commenting on an essay by Stewart. 'On the Idealism of Berkeley'. Collected Works of Dugald Stewart, V, 87-120, with particular reference to 107-9.

l'histoire humaine. Dans une autre Europe, que celle de 1800 l'arrivée de l'Inde pouvait ne pas ^{être} assez fulgurante pour décider un autre ~~se~~ ^{un} nouvel humanisme. (1)

It will have been evident that Mackintosh's view of India had nothing in common with the Evangelical outlook urged on him throughout his period in India by the Director of the East India Company, Charles Grant; nor was he a premature exponent of the contemptuous utilitarian policy of total anglicisation. His respect for Indian culture was genuine, although he seemed to study it still for didactic purposes. In so far as British attitudes to India can be classified, he must be seen as having most in common with those administrators who, raised in the school of Wellesley, seemed to be settling the Indian Empire on Burkean principles. (2) Of the four men generally reckoned to be of this group - Elphinstone, Malcolm, Munro and Metcalfe - Mackintosh was well acquainted with two, Elphinstone and Malcolm, both personal friends of his during his years in Bombay. (3) It might well be suggested that the Scottish influence, above all, helped to characterise the outlook, empirical and historical, of this, the 'Romantic' generation in British India. (4)

The most significant aspect of Mackintosh's presence in Bombay was clearly not the minor essays which he himself produced, but his stimulation of work in almost every field of oriental studies, through the activities of the Bombay Literary Society, and through

1 R. Schwab La Renaissance Orientale 85-6. The quotation is from J.M. de Gérando Histoire comparée des systèmes de philosophie, 2nd edition, 8 vols., Paris 1822, I, 298-9.

2 See E. Stokes The English Utilitarians and India, Oxford 1959, Ch. I; G.D. Bearce British Attitudes towards India, Ch. V.

3 Elphinstone was William Adam's nephew. Mackintosh to Adam, 16 August 1811, Blair Adam Papers.

4 It should be remembered that three out of four of these men came from a Scottish background. Munro attended the University of Glasgow, and Elphinstone the Royal High School at Edinburgh. D.N.B.

his own personal encouragement. From an unpromising group of members, much work of real worth was to emerge; a recent study of British writing on Muslim India has judged very favourably Mackintosh's role as a 'catalyst'.⁽¹⁾ The wide ranging oriental scholarship of Vans Kennedy was first stimulated in Bombay in the first decade of the nineteenth century; his most important articles appeared in the Transactions of the Bombay Literary Society.⁽²⁾ Mackintosh had originally declared his aim to be to spread a knowledge of 'the general maxims of historical criticism' among orientalist.⁽³⁾ The achievements of the members of the society proved his success. William Erskine contributed a number of articles to the Transactions, all laying great stress on the historical criticism of evidence, including the evidence of inscriptions and architectural remains. He devoted his life to oriental studies, and his later works were to be standard authorities on the Mughal Empire.⁽⁴⁾ Mackintosh advised and encouraged Colonel Mark Wilks in the writing of his History of Mysoor:

the first British work on Indian history founded on extensive literary and non-literary evidence critically and carefully examined. ⁽⁵⁾

And Mackintosh suggested to John Briggs that he should translate from the Persian a history of Muslim India; Briggs' text was carefully criticised for its use of sources, collated, edited, and annotated.⁽⁶⁾

1 J.S. Grewal Muslim Rule in India. The Assessments of British Historians, Calcutta, 1970, 111.

2 On Kennedy (1784-1846), see ibid, 98-109, and D.N.B.

3 Mackintosh to Charles Butler, 16 January 1809. Memoirs I, 444. Quoted Grewal op.cit., 111.

4 Grewal op.cit., 111-2; William Erskine Memoirs of Zehir-ed-din-Muhammed Baber, London 1826; idem History of India under Babar and Humayun, 2 vols., London 1854.

5 M. Wilks Historical Sketches of the South of India, in an attempt to trace the history of Mysoor from the origin of the Hindoo government of that state, to the extinction of the Mohamedan dynasty in 1799, 3 vols., London 1810-17; Grewal op.cit., 113.

6 Grewal op.cit. 114-9; the works of John Briggs (1785-1875) included History of the Rise of the Mahomedan Power in India till the year A.D. 1612, 4 vols., London 1829; The Siyar-ul-Mutakherin, London 1832.

John Malcolm, too, paid tribute to Mackintosh's inspiration.⁽¹⁾ Malcolm discussed his works - a history of Persia, and a political history of India - with Mackintosh, as he was writing them at Bombay.⁽²⁾ Mountstuart Elphinstone, after his mission to Afghanistan, submitted the manuscript account of his travels to Mackintosh, who persuaded him to publish it.⁽³⁾ Later Elphinstone felt the need to combat James Mill's utilitarian onslaught on Indian society in his History of British India;⁽⁴⁾ and encouraged by William Erskine, he wrote the sympathetic History of Hindu and Muhammedan India, drawing on the work of Erskine and of Briggs. Unfortunately this was never brought up to the period of British occupation.⁽⁵⁾ All these writers had in common a rejection of the 'moral imperialism' of the Evangelicals and Utilitarians; they shared a respect for the culture and ethos of Indian societies.⁽⁶⁾

There were, of course, important differences between Mackintosh and the administrators; Mackintosh never abandoned his Whiggish belief in the rule of law, even in the face of a totally different tradition, nor was he ever really faced with this dilemma, as the Recorder of Bombay. But in his regard for Indian literature, history and philosophy as worthy of study almost on the same level as the great writers of Europe, and in his insistence on the scientific study

1 Transactions of the Bombay Literary Society, I, 313-5.

2 Mackintosh to Adam, 16 August, 1811, Blair Adam papers; Elphinstone to Mackintosh, 20 April 1811, and Mackintosh to Whishaw, 13 August 1811. B.M.Add MSS 52452; Mackintosh's notes on the manuscript 9-24 April 1811 B.M.Add MSS 52438; Colebrooke Life of Mountstuart Elphinstone, I, 240-1. For a discussion of Elphinstone's An Account of a Mission to Cabul, see Bearce British Attitudes towards India, 128-131.

3 Entries in MSS Journal. B.M.Add. MSS 52438-9 passim.

4 6 vols., London 1818.

5 Grewal op.cit., 130-164; C.H. Philips 'James Mill, Mountstuart Elphinstone and the History of India' in Historians of India, Pakistan, and Ceylon, edited by C.H. Philips, Oxford, 1961, 217-229.

6 Grewal op.cit., 109, 119, 163-4.

of society and its institutions, Mackintosh's work throws some light on 'the touchstone of history and experience' which characterised this generation of British administrators;⁽¹⁾ and it sprang directly from an intense interest in the problems and the society of British India, which was typical also of that early generation of Edinburgh Reviewers.⁽²⁾

As a postscript, it may be noted that Mackintosh's interest in oriental studies was lifelong. He was to be a founder member of the Royal Asiatic Society of Great Britain and Ireland.⁽³⁾ More interesting is his friendship with A.W. Schlegel, one of the leading exponents of the new German philology. They first met at Coppet in 1814, and later stayed some time together at Mme de Stael's house in Paris, where Schlegel, preparing a book on etymologies, impressed Mackintosh with his extensive knowledge, and mysterious Germanic notions of language.⁽⁴⁾ It must have been this, as well as his previous interest, which enabled Mackintosh to be one of the first in England to distinguish between the 'philosophy of languages', 'a science so new as to be yet without a name', and the 'philosophy of language' as expounded by Tooke:

The latter science considers only what is common to all languages. The former is conversant with the variety of classes into which human languages are to be divided according to their origin and structure, and exhibits the history of their various changes and mutual dependence.

1 Stokes English Utilitarians and India, 15.

2 Grewal op.cit. 62.

3 Transactions of the Royal Asiatic Society of Great Britain and Ireland, London 1827, I, x.

4 Entry in MSS Journal, Coppet, 10 September 1814, and Paris, Saturday (26 November 1814) B.M.Add. MSS 52441.

A.W. Schlegel, Mackintosh declared, who had turned from etymologies of Provencal to Sanskrit, throwing much light on its resemblances to Persian, Greek, and Teutonic, would be the first to examine the ancient classics of India in this light.⁽¹⁾ In their correspondence, Schlegel frequently asked Mackintosh for help in his work on Sanskrit; he asked him to obtain rare works, to consider the publication of some of these in England, and to get him admitted as a member of the Royal Asiatic Society.⁽²⁾ Mackintosh read, almost as soon as they were published, the works of the Schlegels, and of other leading philologists, and acknowledged their supremacy in the field.⁽³⁾

Schlegel acknowledged Mackintosh's help in one of his later works: Réflexions sur les études des langues asiatiques, adressées à Sir James Mackintosh;⁽⁴⁾ in this he criticised English orientalisists for their failure to recognise the necessity of the critical method, and for expending their time and resources on a programme of mere translation of classical works. But Mackintosh was an exception; his scientific, but non-utilitarian approach, and his sympathy with the leaders of the European romantic movement, enabled him to see

1 Review of 'Stewart's 'Introduction to the Encyclopaedia' in the Edinburgh Review, XXXVI, October 1821, 264. Quoted by Aarsleff The Study of Language in England, 143n.

2 Schlegel to Mackintosh, 16 September 1821. B.M.Add. MSS 52453, and 18 October 1829. J. Koerner Krisenjahre der Frühromantik. Briefe aus dem Schlegelkreis, 2 Bde Brunn 1936, 7, II, 486-7. See also Schlegel to Auguste de Stael, 26 September 1821 'Je m'honore de la bienveillance de Mack. -il voit les études indiennes d'un oeil philosophique, ce qui n'est pas frequent chez les Anglois; il m'offre tous ses bons offices' Koerner op.cit. II, 379.

3 'Your remarks, together with Mr. Bopp's comparison of the Sanscrit with Greek and Teutonic leave me in no doubt of an opinion which I had long entertained, that these three ancient & extensive languages flow from the same source...The application of yourself and your brother to Indian reasoning will be an epoch in that branch of knowledge. You bring to it that acquaintance with other languages, with comparative grammar & with the general principles of philology which our Anglo-Indians cannot possess'. Mackintosh to A.W. Schlegel 21 August 1821. Sachsische Landesbibliothek Dresden. Mscr. Dresdenensis e90 XIX Bd15 nr5 (On microfilm; there are nine letters from Mackintosh to Schlegel in this library).

4 Bonn 1832; for a discussion, see Schwab La Renaissance Orientale, 97.

the importance of this radical approach. More attention has been paid recently to the role of comparative philology in the development of evolutionary social theory in the second half of the nineteenth century.⁽¹⁾ Here, among Mackintosh's many other interests, is one more example of a Scottish initiative that failed. Yet the period spent by Mackintosh in India did enable him to lay the foundations for his future connections with the romantic movement in Europe; his view of India must be seen in a European, and not a purely British setting.

1 J.W. Burrow 'The Uses of Philology in Victorian England' in Ideas and Institutions in Victorian England Edited by R. Robson, London 1967; idem. Evolution and Society Ch. V.

VII THE EUROPEAN CONTEXT

By the time that Mackintosh re-entered political life in 1813, the prospect of victory abroad was the main focus of political interest. The forces of the restoration were reviving, while Bonaparte's empire was clearly failing. At the same time, a newly emerging liberalism claimed to play some part in the settlement of Europe. The international outlook of a small group of cosmopolitan liberals, among whom Mme de Stael was the most prominent, was congenial to Mackintosh, since their attitudes to the Revolution and to Bonaparte had run closely parallel to his own. Moreover, developments in philosophy and literature made their thinking appear less barren than undiluted Whiggism; eighteenth century constitutionalism might be revived and invigorated by such new influence. Many writers have remarked on the extent to which Mackintosh acted as Mme de Stael's guide to English politics and institutions; there is no doubt that he played some part in creating that image of England which Mme de Stael transmitted to Europe.⁽¹⁾ Equally, he helped to mould the English response to Mme de Stael, and to develop the affinity which was clearly felt between English Whigs, and liberals and 'doctrinaires' in France.⁽²⁾ Mackintosh was familiar with others in the circle of Mme de Stael: his friendship with A.W. Schlegel has already been

1 R.C. Whitford 'An Essay in Friendship: Mme de Stael's English Triumph'. South Atlantic Quarterly, XV, 1, 1916, 41-51; D. Gunnel 'Madame de Stael en Angleterre: une année d'exil (juin 1813 - mai 1814) Revue d'histoire littéraire de la France, XX, 1913, 868-898; R.A. Jones 'Madame de Stael and England: a study of Mme de Stael's English acquaintances and of her reputation and influence in England'. Unpublished M.A. thesis. University of London, 1928, 246-54; R. Escarpit L'Angleterre dans l'oeuvre de Mme de Stael, Paris 1954, 51-4.

2 For discussion of these mutual sympathies, see T. Zeldin 'English Ideals in French Politics', Historical Journal, II, 1959, 40, 58; V.E. Starzinger Middlingness: Juste Milieu political theory in France and England 1815-48, Virginia, 1965; D. Johnson Guizot. Aspects of French History 1787-1874, London 1963, Ch. 2.

mentioned; Constant was a much older acquaintance whom he was eager to meet again; J.C.L. de Sismondi was to enter his own family circle.⁽¹⁾ Through these he met others - Guizot, de Broglie, de Barante. Such contacts went beyond the purely social links of Paris and London society; in England Mackintosh was prominent in urging the need for support for an isolated liberalism with which English Whigs could feel much in common, in its hostility to arbitrary government and to democratic usurpation of power alike, and in its emphasis on tradition and history as essential elements in constitutional government. Mackintosh had, more than most other politicians, a perspective which if sometimes faulty was nevertheless European.

Sir James Mackintosh first met Mme de Stael in the autumn of 1813; but each had, from a distance, admired the work of the other. Mme de Stael publicly acknowledged the impact which his speech at Peltier's trial had had on her.⁽²⁾ In Bombay Mackintosh had rhapsodised over Corinne, and followed her literary career closely.⁽³⁾ But her preoccupations were now very different; she had been planning, since her arrival in Sweden in 1812, the formation of a European coalition against Napoleon, and the establishment of a liberal monarchy in France, with Bernadotte as king. To advance this cause, in June 1813 she came to England, and there found herself at cross purposes with political alignments. Though broadly in sympathy with the Whig

1 Sismondi married Jessie Allen, the sister of Lady Mackintosh, in 1819. J.P. de Salis Sismondi 1773-1842: la vie et l'oeuvre d'un cosmopolite philosophe, Paris, 1932.

2 See above, V, 161.

3 Memoirs, I, 405-7, II, 33; entry in journal, 5 January 1811. B.M.Add MSS 52438.

outlook, she nevertheless at first backed Lord Liverpool's government wholeheartedly, for their prosecution of the war, and deplored the Whig tenderness towards Napoleon. But throughout her stay in England, her experiences gradually led her to modify this attitude.⁽¹⁾ There is no lack of evidence for Mackintosh's role as her escort in London society; it was commented upon by contemporaries, recorded in memoirs and correspondence, and went so far as to arouse the jealousy of John Rocca, Mme de Stael's young lover.⁽²⁾ From July 1813, Mackintosh held regular 'Staelienne evenings', and spent part of every week at her house in Richmond.⁽³⁾ Moreover he acted as her conversational foil, following her lead, feeding her eloquence, and when necessary defending her against heavy onslaughts - notably against those of the Duke of Wellington.⁽⁴⁾ Their relations were very close during

1 Lady Charlotte Blennerhassett Madame de Stael, her friends, and her influence in politics and literature tr. J.E. Gordon Cumming, 3 vols, London 1889, III, 421. B.Jasinski 'Madame de Stael, l'Angleterre de 1813-4, et les Considérations sur la révolution française'. Revue d'histoire littéraire de la France, 66, 1966, 12-24.

2 There are many descriptions of Mackintosh and Mme de Stael in London society together; the most detailed account is to be found in Darwin Century of Family Letters, I, 42ff. Also see Memoirs, II, 268-75; Baronne de Nolde (ed.) Lettres de Mme de Stael à Benjamin Constant, Paris 1928, 138ff; H.C. Robinson Diary 219; S.H. Romilly (ed.) Letters to Ivy from the First Earl of Dudley, London 1905, 208-37; W. Sichel (ed.) The Glenbervie Journals, London 1910, 164-223; J.C. Hobhouse Recollections of a Long Life, 6 vols., London 1909, I, 119; S.Smiles Memoir and Correspondence of John Murray, 2 vols, London 1891, I, 266ff; M. Bishop Table Talk of Samuel Rogers, London, 1952, 201; Memoirs of the life of Sir Samuel Romilly, edited by his sons, 3 vols, London 1840, III, 118; Earl of Ilchester The Home of the Hollands 1605-1820, London, 1937, 282ff; Lady Theresa Lewis (ed.) Extracts from the Journals and Correspondence of Miss Berry 3 vols., London 1866, II, 536-49, III, 1-13; C.C. Southey (ed.) The Life and Correspondence of Robert Southey, 6 vols., London, 1849-50, IV, 245. For Godwin's relations with Mme de Stael through Mackintosh, see the references in his MSS diary to this period. Film MSS 73, Bodleian library.

3 Darwin Century of Family Letters, I, 49-52, for a description of the first of these 'Staelienne evenings'; one invitation to Mme de Stael, to one of these, has survived, in the Boston Public Library, Massachusetts (n.d.)

4 Darwin op.cit. I, 45-6; for the way in which Mackintosh could appear at a disadvantage by her side, see P. Kohler Mme de Stael et la Suisse, Lausanne, 1916, 623-5.

this period; Mme de Stael exercised an imperious command, which was relished rather than resented.

She treats me as the person whom she ~~is~~ most delighted to honour; I am generally ordered with her to dinner, as one orders beans and bacon; I have in consequence dined with her at the houses of almost all the Cabinet Ministers. (1)

Any dereliction of duty was instantly reprimanded:

Je vous avouerai que je ne conçois pas trop pourquoi vous êtes deux jours sans me voir. Si je me conduisais ainsi vous diriez et vous auriez raison que je ne sais pas vous apprécier. (2)

Besides remaining continually at her side, he also, to the concern of some of his friends, appeared as her avowed publicist.⁽³⁾ Francis Jeffrey, in a review of her work De la Littérature, that heralded her coming, made it clear that, in spite of political disagreements, the Edinburgh Review would look with favour on her attempts to:

trace out the operation~~s~~ of general causes, and by combining the past with the present, and pointing out the connexion~~s~~ and reciprocal action of all coexistent phenomena, to develop the harmonious system which actually prevails in the apparent chaos of human affairs. (4)

And Jeffrey's review was followed in the next number by Mackintosh's review of Réflexions sur le suicide, in July 1813.⁽⁵⁾ This slight essay was not seen by the majority of London critics as one of Madame de Stael's better works, nor did Mackintosh delude himself into

1 Memoirs, II, 269.

2 Mme de Stael to Mackintosh, vendredi à 4h. Bib. pub. et univ. de Genève.

3 Lady Seymour (ed.) The 'Pope' of Holland House. Selections from the Correspondence of John Wishaw and his friends, 1813-4, London, 1906, 42.

4 Edinburgh Review, XXI, February 1813, 2.

5 Ibid, XXI, 424-32.

thinking otherwise.⁽¹⁾ He laid emphasis rather on the writer as an almost unique example of great talent in women, and praised her for her unwearying resistance to Napoleon in the name of liberty. Mme de Stael's literary works were not, in 1813, to be separated from her political reputation. In this spirit, her analysis of suicide meets with Mackintosh's approval; an act of suicide committed from patriotic motives, as a demonstration against tyranny, was not cowardice, but a noble failure to compromise with unworthy standards:

As liberty is the only security for just and humane government, it must be owned, that the diffusion of such sentiments seems to be a higher interest of mankind and a more worthy object of self-sacrifice, than the preservation of any individual, or even of any state. (2)

There were then loyalties to be placed above the self-interest of the individual and the preservation of the state; yet, equally, where there were urgent duties and responsibilities to others to be weighed in the balance, suicide should be seen to be culpable. In an incidental way, this was also an assertion of the moral responsibility of the individual, directed against a materialist utilitarianism.

A much more interesting event - a major one in literary history - was the publication in England in October 1813 of De l'Allemagne, suppressed in France in 1810 by Napoleon. Mackintosh had helped Mme de Stael to negotiate with John Murray, who paid £1500 for the manuscript. He read her proofs, and helped to correct the preface to her work.⁽³⁾ This study of the German nation, based on Mme

1 R.A. Jones 'Madame de Stael and England', 318-322; Memoirs, II, 269.

2 Edinburgh Review, XXI, 428.

3 S. Smiles Memoir and Correspondence of John Murray, I, 314ff; Mme de Stael De L'Allemagne edited by the Comtesse de Pange, 5 vols., Paris, 1958-60. Introduction xxxiv. John Murray himself was a little suspicious of Mackintosh's close involvement with the work; he made it clear to Mme de Stael that Mackintosh could claim no prior rights to make extracts from the work for his review, as he had requested. The Quarterly had first rights. Mme de Stael to John Murray 29 July 1813, and John Murray to Mme de Stael, n.d. on reverse of above letter. John Murray papers.

de Stael's travels in 1803 and 1804, and largely written between 1807 and 1809, had a very different significance in 1813; nor was Mme de Stael quite clear as to the nature of the new Germany which appeared to be rising from Napoleonic domination.⁽¹⁾ Yet, though her work was initially taken to be a political weapon, Mme de Stael was developing the theme of De la Littérature in her portrait of the German nation, its history, traditions, language, and above all its literature. De l'Allemagne combined, in varying degrees, elements of the liberalism of Mme de Stael, of a new romanticism, and of a future nationalism. It appeared as a powerful force directed against both arbitrary rule, and materialist philosophy. In England it aroused strong feelings, though liable, again, to be initially inspired by Mme de Stael's political reputation rather than her literary talent. The first edition was exhausted in three days; but there were those who stood out against it, including both Brougham and Horner.⁽²⁾ Mackintosh's determined championship of her work in the Edinburgh Review, against the judgement of two close friends, is therefore of some significance. It startled, challenged and divided public opinion.⁽³⁾

The neglect of German literature and philosophy in England and France had, before the publication of De l'Allemagne been remedied only by a few isolated individuals, and in particular, by Charles

1 On De l'Allemagne, see H. Glaesener 'La révélatrice d'un peuple', Académie royale de Belgique, Mémoires 2ème série, XV, 1 Bruxelles, 1921; I.A. Henning L'Allemagne de Mme de Stael et la polémique romantique: première fortune de l'ouvrage en France et en Allemagne (1814-30). Paris 1929; Comtesse de Pange Auguste-Guillaume Schlegel et Madame de Stael, Paris, 1938.

2 Darwin Century of Family Letters, I, 59; The Life and Times of Henry, Lord Brougham, written by himself, London, Edinburgh, 3 vols, 1871, II, 98.

3 Edinburgh Review, XXII, October 1813, 198-238; L. Horner Mémoires and Correspondence of Francis Horner, I, 149; R.C. Whitford, Madame de Stael's literary reputation in England, University of Illinois Studies in Language and Literature, IV, 1, 1918, 39.

Villars in France.⁽¹⁾ Mackintosh himself, as has been seen, had learnt German, and read widely, and knew far more of German philosophy at this time than did either Thomas Brown or Dugald Stewart.⁽²⁾ He considered that its novelty had led it to be branded unfairly with the radicalism of the revolution. The essence of De l'Allemagne was the emergence of a truly national literature, with its principles, its arts and its speculations, firmly grounded in the national character. Such an essence could not be calculated or built up from long and thorough observation. It had to be perceived:

The genius of the philosophical and poetical traveller is of a higher order. It is founded in the power of catching, by a rapid glance, the physiognomy of man and of nature. It is, in one of its parts, an expansion of that sagacity which seizes the character of an individual, in his features, in his expression, in his gestures, in his tones, in every outward sign of his thoughts and feelings. The application of this intuitive power to the varied mass called a Nation, is one of the most rare efforts of the human intellect. (3)

In this is presented the heart of Mackintosh's appraisal of Mme de Stael - her ability to take the 'philosophical' view of her subject. Her survey of the history of German literature is seen as pioneering the 'philosophy of literary history' which other writers in her shadow were following: Sismondi, Barante, the Schlegels. Similarly, while aesthetic taste and fashions might fluctuate, the 'philosophical critic' determined the underlying and universal principles of beauty.⁽⁴⁾

Mme de Stael was, as a 'philosophical historian' extracting and establishing certain laws which governed the social and intellectual development of nations. In De l'Allemagne the crucial distinction

1 G. Boas French Philosophies of the Romantic Period, Baltimore 1925, 169-80.

2 R. Wellek Kant in England, 26-51, and above VI, 194-195.

3 Edinburgh Review, XXII, 204.

4 Ibid, XXII, 218-9.

was that between the inheritances of the Teutonic and Latin races. The Germanic races were predisposed to chivalry, to romance and to a spiritual religion; the Latins inherited much of their outlook from the ancients, including their tendency to polytheism. Mackintosh readily pointed out some of the obvious over-simplifications behind her theory: the Latin nations first saw the development of a romantic and chivalric culture; the influence of Catholic and Protestant faiths on the literature and character of a nation had not been sufficiently considered. Yet there is no doubt that Mackintosh, in giving the distinction between the 'classic' and the 'romantic' wide circulation in the Edinburgh Review, was recognising a 'literary revolution'.⁽¹⁾ In a review of the poems of Samuel Rogers, published in the same volume of the Edinburgh Review,⁽²⁾ Mackintosh made it clear how far he had accepted Mme de Stael's arguments. The pattern of a literature had naturally to reflect the habits, political and social, of a nation:

(The difficulty) would be insurmountable, even in framing the most general outline of a theory, if the various forms assumed by imagination, in the fine arts did not depend on some of the most conspicuous, as well as powerful agents in the moral world. But these arise from revolutions of popular sentiments, and are connected with the opinions of the age, and with the manners of the refined class, as certainly, though not ~~in the same degree~~^{as with}, as with the passions of the multitude. The comedy of a polished monarchy never can be of the same character with that of a bold or tumultuous democracy. Changes of religion, and of government, civil or foreign wars, conquests which derive splendour from distance, or extent, or difficulty;—long tranquillity;—all these, and indeed every conceivable modification of the state of a community, show themselves in the tone of its poetry, and leave long and deep traces on every part of its literature. (3)

1 Ibid, XXII, 34; J. Clive Scotch Reviewers, The Edinburgh Review, 1802-15, London, 1957, 153.

2 Edinburgh Review, XXII, 32-50.

3 Ibid, XXII, 32.

The tranquillity of the eighteenth century had bred a rational art; yet when classicism began to pall, it was remembered that the greatest poetry was that which sprang naturally from the national genius, as had that of the Elizabethan age. More significantly:

The approaches of a new order (or rather at first disorder) in political society were attended by correspondent movements in the poetical world. (1)

In literature the tragic, the sublime, the heroic and the pathetic echoed revolutionary political and social upheaval. And Mackintosh also saw the stirrings of the national poets of Ireland and of Scotland, looking to the glories of their past, as symptoms of a great intellectual change.

The forces of nationalism and romanticism were allied; and Germany was the source and the touchstone of the new literary revolution. Mackintosh praised without reserve Mme de Stael's discussion of the character and manners of the German nation 'the best example of the talent for painting nations which we have attempted to describe'. The birth of a new literature reflected the manners of its people:

A studious and learned people, familiar ⁱⁿ with the poets of other nations, with the first simplicity of nature and feeling, were too often tempted to pursue the singular, the excessive and the monstrous. Their fancy was attracted towards the deformities and diseases of moral nature; - the wildness of an ancient literature, combined with the eccentric and fearless speculations of a philosophical age. (2)

Even more, it reflected the spiritual, mystical religion, to which the Germanic race was most naturally drawn. The Protestant tradition, and a reaction to the spread of revolutionary scepticism, had helped to kindle moral enthusiasm among the multitude. Such undogmatic

1 Ibid, XXII, 36.

2 Ibid, XXII, 200.

religiosity was an essential part of Mme de Stael's own creed ; but Mackintosh treats the religious revival without personal enthusiasm - he was accused of hypocrisy over this review, since it was known that he himself had no defined religious beliefs.⁽¹⁾ Yet he was particularly interested in the phenomenon of a union of idealist philosophy and mystical religion, which could be paralleled elsewhere - notably in India.

Mme de Stael appeared to be studying speculative philosophy largely as evidence of the moral and literary character of the nation; Mackintosh nevertheless rated her summary introduction to it highly, as he did her account of Goethe, Schiller, and Lessing. The point of controversy that emerged most clearly, and that continued to dominate Mackintosh's philosophical work, was the attempt to reconcile some kind of innate moral principle with the doctrine of utility; in so doing he was naturally led to dogmatic conclusions:

There are certain facts in human nature, derived wither from immediate consciousness or unvarying observation, which are more certain than the conclusions of any abstract reasoning, and which metaphysical theories are destined only to explain. That a theory is at variance with such facts, and logically leads to the denial of their existence, is a strictly philosophical objection to the theory: that there is a real distinction between right and wrong, in some measure apprehended and felt by all men: that moral sentiments and disinterested affections, however originating, are actually a part of our nature: that praise and blame, reward and punishment, may be properly bestowed on actions according to their moral character, - are principles as much more indubitable as they are ~~such~~ more important than any theoretical conclusions. (2)

1 For the place of religion in Mme de Stael's thought, see R. Mortier 'Philosophie et religion dans la pensee de Mme de Stael'. *Rivista di letteratura moderna e comparata*, 20, 1967, 165-76; I. Benrubi *L'ideal moral chez Mme de Stael et Amiel*, Paris 1940. 148-66. Horner commented acidly on Mackintosh's bad faith in this review. *Memoirs and Correspondence of Francis Horner*, II, 149.

2 *Edinburgh Review*, XXII, 237-8.

The hostility apparent between the motives of advantage and duty was responsible for the variety of general moral systems; the nature of the moral sentiments themselves called for further inquiry, and in this can be seen the germ of the future Dissertation on Ethical Philosophy. Mackintosh anticipated here the direction that such a study would take:

If ever a peace should be established between these conflicting principles, it must be by a powerful, and comprehensive and impartial representation of the whole moral system; in which the morality of actions, the motives of conduct and the nature of moral approbation, are perfectly distinguished from each other; in which a broad line of demarcation separated theory from practice; which exhibits general utility, ascertained by calculation, as the basis of moral rules, and the test of virtuous sentiments; but leaves every action to be impelled by sentiment, ^{and} controlled by rule, without the toleration of any appeal to utility. (1)

Mme de Staël had not taken sufficiently into consideration Bentham's attempt to found the science of legislation on the general rules of utility, as opposed to the pursuit of individual self-interest.

Mackintosh further went on to consider, in the 'contest between Scepticism and Dogmatism' the works of Kant and Reid as independent and contemporary attempts to defeat the menace of scepticism:

The extensive technical language of Kent, and the unfortunate term Common Sense adopted by Reid, both denote the same ultimate laws of thought which mark the boundaries of reasoning, and against which all disputation is a vain mockery. (2)

Such a comment went far to fulfil the prophecy of Henry Crabb Robinson, who had predicted that while the Scottish philosophers would welcome the works of Kant for what they believed to be his end, they would retreat in suspicion and hostility from his means. (3)

1 Ibid, XXII, 233.

2 Ibid, XXII, 237.

3 R. Willek Kant in England, 26-7.

This review heralded an almost unanimous chorus of favourable opinion, both in the periodicals and among the greater literary figures.⁽¹⁾ Although De l'Allemagne was not immediately significant in English intellectual development, politically it seemed to provide evidence for the way in which nationalism based on a respect for a nation's tradition, its history and literature, could be combined with liberal political ideas. The publicist of European romanticism suggested a liberalism based not on utilitarian calculation but on intuitive morality. For her part, Mme de Stael was changing her views on English politics; she moved from an identification with the ministerialists to closer links with the Whigs, with whom temperamentally she had so much more sympathy. In October she visited Bowood, with a party that included Mackintosh.⁽²⁾ Her admiration for Scottish writers and philosophers led her to consider a visit to Edinburgh, which was never made.⁽³⁾ At the beginning of 1814 Mackintosh acted as intermediary in the initiation of an important friendship between William Wilberforce and Mme de Stael. In the cause of the anti-slavery movement, Wilberforce emerged from his retirement into London society, and found it temporarily intoxicating.⁽⁴⁾ After his first meeting with Mme de Stael, he sent her some publications on the slave trade and other Evangelical subjects of concern.⁽⁵⁾ Breaching his normal rule never to dine out, he ventured

1 R.A. Jones 'Madame de Stael and England', 323-363.

2 Memoirs, II, 271.

3 R.A. Jones 'Madame de Stael and England', 280-4.

4 R. & S. Wilberforce Life of William Wilberforce, IV, 156-62.

5 Wilberforce to Mme de Stael, 22 February 1814. V de Pange 'Mme de Stael and her English correspondents'. Unpublished Oxford D.Phil thesis, 2 vols., 1955, II, 441.

to Mme de Stael's on 18 March 1814.⁽¹⁾ The movement against the slave trade continued to concern Mme de Stael, and once back in Paris, she became a powerful ally of the English Whigs and humanitarians there.⁽²⁾

After the capitulation of Paris on 30 March 1814, Mme de Stael could no longer bear to stay away from France. Her feelings on the fall of Napoleon were equivocal; although she hated to see her country occupied by invading armies, she had hopes for the establishment of constitutional monarchy there. She returned to Paris in May 1814, and her salon rapidly became a centre for liberal hopes, and a magnet for individual sympathisers; and as the English began to flock to Paris, her salon, unlike that of almost every other hostess, was open to them.⁽³⁾

Tempted by the prospect of seeing Paris for the first time since 1802, Mackintosh determined to investigate the archives gathered from all parts of Europe by Napoleon, and stored in the Foreign Office in France. Mme de Stael wrote to Talleyrand on his behalf, and believed that she had obtained the necessary permission for him.⁽⁴⁾

Mackintosh had also, by this time, renewed his acquaintance with Benjamin Constant. His first letter to Constant, written after many messages through Mme de Stael, has apparently not survived.⁽⁵⁾ In his reply Constant indicated how.

1 Life of Wilberforce, IV, 164; Wilberforce to Mme de Stael, 5 March 1814. De Pange 'Mme de Stael and her English correspondents', II, 444.

2 Already Wilberforce had it in mind to enlist her to write for the cause. Wilberforce to Mackintosh, 14 April 1814, B.M.Add. MSS 52453. See also Comtesse de Pange 'Madame de Stael et les nègres', Revue de France, 1 October 1934, 425-43.

3 M.E. Elkington Les relations de société entre l'Angleterre et la France sous la restauration 1814-30, Paris 1929, 18-19.

4 'Mme de Stael writes, M de Talleyrand m'a dit qu'il vous destinoit tous les papiers dont vous pouviez avoir besoin pour votre histoire'. Mackintosh to Lady Holland, July 1814. B.M.Add. MSS 52446. For the problems that faced Mackintosh in the archives, see below, IX, 309.

5 Baronne de Nolde Lettres de Madame de Stael à Benjamin Constant, 138, 153, 156ff. Private information from Professor C.P. Courtney, who is preparing an edition of Constant's letters.

much he shared Mackintosh's own political preoccupations at that time; as his work De l'Usurpation had made clear, patriotism for Constant was not merely a question of national sovereignty, but of contesting also a systematic tyranny. That of Bonaparte was far more calculated, oppressive and degrading, than that of Robespierre had ever been.

He must fall before we can think of anything else; he must fall, that we may have time to think of anything else. I am sometimes vexed but never frightened, at the attempts other governments, even while they struggle against him, are making to establish their own despotism. (1)

And Mackintosh wished also to meet again his old correspondents, de Gérando and Camille Jordan.

He set out for Paris at the end of August 1814, and though Mme de Stael was then at Coppet, he was introduced by her son Auguste de Stael, and by Constant, to the Duc de Broglie, Lally-Tollendal, Laine, and others, and, as a favoured guest, into the salons of Mme Récamier and the Duchesse de Duras.⁽²⁾ In travelling on to Switzerland, he stopped at Coppet, where, although Mme de Stael was just about to return, he met for the first time A.W. Schlegel and Sismondi:

Of the two men of letters who are here, I more willingly associate with Sismondi than with Schlegel though Mme de Stael may be right in thinking the last a man of superior talent. But Sismondi's opinions and pursuits agree better with mine, and we are become great friends. (3)

Mme de Stael was also embarrassingly lavish in her offers of hospitality.

1 Constant to Mackintosh, 27 March 1814. Memoirs, II, 275-6.

2 Ibid, II, 299-301; entry in journal, 22-31 August, 1814. B.M.Add. MSS 52441; see also the Duc de Broglie's recollection of Mackintosh. Duc de Broglie Souvenirs, 1785-1870, 4 vols., Paris 1886, I, 273-5.

3 Entry in Journal, Coppet 10 September, B.M.Add. MSS 52441.

Mackintosh wrote to his wife:

We found Mme de Stael preparing for her journey to Paris, where she goes next Thursday having taken a house at Clichy. She proposes to me to live there during the time that I shall be occupied ~~with~~^{for} the papers at Paris & she warmly invited you & me with any children we pleased to come here for three weeks of next summer...I have not decided whether for the three ~~weeks~~^{months} which I must employ on the papers at Paris I ought to accept Mme de Stael's invitation or take a small lodging - The invitation will save me all expense but that of a cabriolet - But I am not quite sure that it is dignified & shall seriously wish to know your opinion. A house in Paris differs from one in the country & I begin to feel some scruple at the presence of Rocca without any further excuse. (1)

In Switzerland he was impressed by the combination of the sublime grandeur of the scenery, and the history of the Swiss struggle against tyranny. In a local inn he encountered Aloys Reding, one of the heroes of the Swiss struggle against Napoleon. Reding had received a copy of Mackintosh's speech in defence of Peltier, and, recalling it, praised it highly. (2)

After returning to Paris on 18 October, he eventually took a small lodging; but he spent a great deal of time with Mme de Stael at her house at Clichy. His attendance was required as peremptorily as it had been in England, and in his journal to his wife, Mackintosh at first complained of this:

Mme de Stael went alone to Clichy, and was either shocked or amused at my want of all politeness in declining to attend her for so frivolous a reason as an appointment with a surgeon next morning. (3)

1 Ibid.

2 Ibid, 18 September. See the éloge of Reding contained in Mackintosh's defence of Peltier, Works, III, 293, and Mackintosh's gift of a copy to Reding through Francis d'Ivernois. Mackintosh to D'Ivernois n.d. (1803?). Brougham papers, 34, 422, University College London.

3 Entry in journal, 6 November, B.M.Add. MSS 52441.

I am now rather tired of Paris & I should be glad of an excuse for going home...I go this evening unwillingly to Clichy & I learn with pleasure that there is a second ~~chamber~~^{room} at Rich's lodgings where I can take refuge at a moment's warning from the shadow of a slight. (1)

Nevertheless this journal of his stay in Paris is an extremely interesting document, in that it suggests that during the period October-December 1814, Mackintosh lived as one of Mme de Stael's familiars, playing a role in her household not unlike that of Schlegel at an earlier date. The journal also establishes that Mme de Stael was at this period writing some of the chapters on England which were to appear in the posthumously published Considérations...sur la révolution française; evidence would suggest that at one stage the portrait of England was intended to be published as a separate volume.⁽²⁾ In the writing of this, Mackintosh was an ever-present audience and mine of information, as the journal shows:

(6 November) Sunday $\frac{1}{2}$ past 3 After breakfast Me de S. read to Schlegel, her son & me three chapters of her work of which those on English society are good & those on English government more ingenious than profound. A scene at Lord Grey's & the party at Bowood are well though flatteringly painted - There is a handsome ~~place~~ for me...I have often observed but never more than in our discussions about England this morning that Mme de Stael catches sense as quickly as she relishes vivacity....

1 (7 November) loc.cit. Dates in brackets are reconstructed from the journal. Claudius and Mary Rich were also staying in Paris.

2 The work was finally published as Considérations sur les principaux événements de la révolution française, ouvrage posthume de Madame la baronne de Stael, publié par le duc de Broglie et le baron de Stael. Paris 1818. There has been some debate as to how far the section on England was once intended to constitute a separate work. On this, see B. Jasinski 'Mme de Stael, l'Angleterre de 1813-4, et les Considérations' Revue d'histoire littéraire de la France, 66, 1966, 20-4, Mme de Stael's intentions on this do appear to have changed rapidly; however, one piece of evidence would suggest that at least at some stage, a work on England was projected. In 1816, Auguste de Stael wrote to John Murray 'You must know that she has very much extended the plan of her work on the causes and results of the French revolution (Des causes et des effets de la révolution française). Instead of 2 vol., it will now consist of three, the latter of which contains a picture of England, as much for itself as in a view of comparison with France, which was first intended for a separate work. That volume will end with general considerations upon the state of France up to the time of the publication'. Auguste de Stael to John Murray, 28 June 1816, John Murray papers. See also S.H. Romilly (ed.) Romilly-Edgeworth Letters, 1813-1818, London 1936, 100-6.

(8 November) Tuesday I came to Clichy with the Staels - It is an old house formerly belonging to the Duke de Levis very large but with no pretence of furniture on the first floor except the books occupied by Durant & myself... I remain here this ~~afternoon~~^{evening} to hear Me de S.'s chapters on England...

12 November This morning we breakfasted as usual late -... Me de Stael read to me more of her MSS on England & spoke better, more sensibly & more morally for half an hour than I have heard her for ~~some~~^{a long} time...

(18 November) In the Evg Me S. Alb & the Duc de Broglie & I went to the Dess of Wellington's ball... I returned with the three Staels to Clichy. We spent the morn^g on the political chapters about England...

(8 December) This morning after an etymological discussion with Schlegel who is really an excellent man I heard Me de Stael's chapter 'On the Love of Liberty' which I think by far the first of all her compositions. It is most noble & will I am sure delight you...

(13 December) After breakfast Me de St. questioned me about our provincial magistracy & about some details for a small sketch of Wilberforce which the Duke of W. has begged her to write to be prefixed to the Paris edition of Wilb.'s letter to Talleyrand which the Duke has directed to be published. (1)

Mme de Stael continued to work for a general abolition of the slave trade. In spite of the strong resistance from French public opinion, she, with Sismondi, was still attempting to add some pressure to that of the British abolitionists.⁽²⁾ The Duke of Wellington backed their cause, and, with Macaulay and Clarkson urging him on at Paris, he finally, in November 1814, secured a modest success;

1 B.M.Add. MSS 52441 passim. The sketch of Wilberforce has been reprinted; 'Préface pour la traduction d'un ouvrage de M. Wilberforce sur la traite des nègres' in Oeuvres Complètes de Mme la Baronne de Stael, publiées par son fils..., 17 vol. Paris 1820, 21, XVII, 369-75. The whole journal throws much new light on Mme de Stael's day to day activities during this crucial period. For the background to this, see V. de Pange The Unpublished Correspondence of Mme de Stael and the Duke of Wellington, translated by Harold Kurtz. London 1965, passim.

2 On the extent to which Mme de Stael and her friends were working against the grain of French public opinion, see P. Reboul Le Mythe anglais dans la littérature française sous la restauration Lille 1962, 119-20.

Frenchmen were forbidden to engage in the slave trade at any point north of the mouth of the Niger.⁽¹⁾ Mackintosh had several lengthy interviews with the Duke on the subject, and sent home to his friends his impressions of the latest developments.⁽²⁾

During his residence at Paris Mackintosh met, besides his old friends, almost all the prominent liberals, moderate royalists, and disguised Bonapartists in Paris society, including Guizot, Barante, Daunou, Destutt de Tracy, Beugnot, and many others. He came to know Constant very much better, and admired his talents greatly, though not always his use of them.⁽³⁾ There was no-one, however, with whom he felt such an intimate affinity as he did with Mme de Stael. After his own return to England at the end of December, they corresponded for some time, although rather spasmodically. Not all these letters have been located, but those that have suggest how far Mackintosh had come to admire and share Mme de Stael's political concerns.⁽⁴⁾ Mackintosh referred to 'humiliating, melancholy and tedious' circumstances which caused him to remain silent for some time in 1815;⁽⁵⁾ and Mme de Stael's invigorating reply to him hinted at the cause:

Il faut pourtant mon cher Mackintosh, que je m'explique avec vous franchement - notre manière d'être ensemble est aussi insupportable et ridicule nous ne serions pas ni l'un ni l'autre aussi jeunes que laisser à personne le

1 Sir Charles Webster The Foreign Policy of Castlereagh, 1813-5. London, 1950, 413-24; R. Coupland Wilberforce, Oxford 1920, 401-2.

2 Entries in journal, (12 November), (20 November), (18 December), 1814. B.M.Add. MSS 52441. On 25 December Mackintosh dined with the Minister of Marine 'to preach the abolition of the Slave Trade & at present a compromise with Sr Domingo'. See also Mackintosh to Horner, 12 December 1814. Memoirs and Correspondence of Francis Horner, II, 215; Mackintosh to Holland, 6 February 1815. B.M.Add. MSS 51653.

3 Memoirs, II, 301, 327, 328. B.M.Add. MSS 52441 passim. There are many references to Constant here which supplement considerably the meagre references to Mackintosh in Constant's Journaux Intimes, reprinted Oeuvres de Benjamin Constant, ed. A. Roulin, 'Bibliothèque de la Pleiade', Paris, 1964. 704, 726, 729.

4 Twenty-four letters from Mme de Stael to Mackintosh were sold at Sotheby's on 6 November 1951. I have located only five of these, two at the N.L.S., and three at the Bibliothèque publique et universitaire de Genève. One letter from Mme de Stael to Mackintosh has been found in the B.M. papers. Two letters only from Mackintosh to Mme de Stael have been found in the family archives, and printed by V. de Pange in 'Mme de Stael and her English correspondents', II, 339-47.

5 Mackintosh to Mme de Stael, 13 January 1816. De Pange op.cit. II. 339.

droit de déranger notre amitié et cette amitié est tellement pure et philosophique, [de] cette [amour?] des lumières et de la liberté nous unit, du moins je m'en flatte si intimement qu'il serait dommage de laisser cette alliance de dénouer, ayez à côté de votre admirable esprit, de votre âme si noble, un caractère aussi ferme pour conserver des amis et je suis un ami le plus dévoué, le meilleur que vous avez - mais qui ne dise porter ombrage à personne. Écrivez-moi donc régulièrement et je vous instruirai de même de tous ce qui vous intéresser. (1)

The last letter from Mackintosh to Mme de Stael known to exist is dated 25 March 1816; there was clearly a further hiatus in the correspondence. (2)

Mme de Stael's work on the French Revolution was published after her death, in 1818, by the Duc de Broglie and Auguste de Stael; it marked the end of a period of tentative and largely ill-founded generalisations about England in France, when relationships were still hampered by the English occupation of France and the foreign policy of Castlereagh. The new liberal interpretation of the French Revolution became an important political weapon in France; Mme de Stael had argued that liberty was ancient, and an essential part of the historic constitution of France. (2) Her portrait of aristocratic England has been closely examined; her emphases show to what extent her Whig sympathies had prejudiced her. (3) Other Restoration historians of England reacted against Mme de Stael's emphasis on institutional patterns, towards the underlying social factors which determined the distribution of power. They turned, too, towards the new industrial England which

1 Mme de Stael to Mackintosh, 18 February 1816. B.M.Add. MSS 52452.

2 De Pange 'Mme de Stael and her English correspondents', II, 344-7.

3 See S. Mellon The Political Uses of History. A Study of Historians in the French Restoration, Stanford, California, 1958, 8ff: Reboul Le mythe anglais dans la littérature française sous la restauration, Part I, passim.

Mme de Stael had largely ignored.

In 1814, when Mme de Stael drafted her chapters on England, the political problems of France, centring on the provisions of the Charte constitutionnelle, led her to focus on what was, in fact, the crucial political issue of the Restoration - how far legislation could create a constitutional monarch and preserve political freedom. Her interest in England was to trace the growth of liberty, and especially the effect of political institutions on the character of a nation. In many ways her view of England appears blindly optimistic: in her discussion of the criminal law, on which it is difficult to believe that she consulted Mackintosh, Dumont, or Romilly,⁽¹⁾ on parliamentary reform and the extent of electoral corruption,⁽²⁾ on Catholic emancipation, and, more generally, on the very existence of an unfettered liberty in the England of the Napoleonic Wars. There is no mention of the repression of the 1790's or of the Luddite risings; Castlereagh is the only British ogre. Mme de Stael defined liberty simply as the security of the individual against the interference of the state.⁽³⁾ And 1688 was the first date at which it was possible to see the values of a free government embedded in the constitution; under the Georges England enjoyed an halcyon age of liberty. An aristocracy, open and flexible, had led the nation against the Crown once, and continued to conduct the business of the nation; again there was naïveté in

1 Mme de Stael Considerations on the principal events of the French Revolution, Posthumous work...Translated from the original manuscript, 3 vols., London, 1818, III, 219-30.

2 Ibid, III, 230-1.

3 Ibid, III, 219.

her assumption that the ranks of the aristocracy were open to all comers. To other Restoration historians, there seemed little difference between Whig and Tory, the names merely a minor distinction within a homogeneous social group. To Mme de Stael party was an essential virtue of the constitution:

The existence of a ministerial and opposition party, although it cannot be prescribed by law, is an essential support of liberty founded on the nature of things. In every country where you see an assembly of men constantly in accord, be assured that despotism exists, or that despotism, if not the cause, will be the result of unanimity. Now as power, and the facilities at the disposal of power, possess attraction for men, liberty could not exist but with this fidelity to party, which introduces, if we may use the phrase, a discipline of honour into the ranks of ~~the~~ enrolled under different banners. (1)

Party operated in a Parliament where there might be a large body of neutral members; in the last resort public opinion was in control, as it had been in 1784. What Mme de Stael believed that she saw in England was a public spirit which alone could safeguard the existence of freedom, which lay behind the institutional guarantees; for her, as for Burke and Mackintosh, the public opinion which was the voice of the substantial part of the nation, the respectable and the propertied in the last resort ruled.

In spite of her praise of the opposition party, she had to reckon with the refusal of the Whigs to open their minds to the menace of Napoleon; there is some evidence to show that at one time she was hotly opposed to those she called the 'democratic Whigs'.⁽²⁾ In

1 Ibid, III, 236.

2 La France et l'Angleterre, VII, 15 aout 1817, 55-62.

the Considerations, her praise is given to the representatives of the 'liberal party', including Lord Grey, Lord Lansdowne, and surprisingly, Lord Harrowby.⁽¹⁾ Her visits to England, her numerous English friends, and the foreign policy of the English government combined to win her to the Whig side on almost every issue. Mme de Stael transformed the image of England in France; as Stanley Mellon has suggested, in the years 1814-1818, the England of the 'philosophes' finally became the England of the Whig historian.⁽²⁾ But others, including Constant, Sismondi, Auguste de Stael, very soon saw the newer England: the repression of the government at home, the need for legal and parliamentary reform, and above all, the consequences of industrialization.⁽³⁾

Mackintosh's association with the group of liberals that centred around Mme de Stael was naturally not over when he returned to England. Constant continued to correspond with him throughout the turbulence of 1815, and asked him to act as an intermediary with John Murray, the publisher.⁽⁴⁾ De Broglie wrote to him, asking for advice on English constitutional practice; he wanted to be instructed on English bills of attainder, in order to frustrate the royalist desire for vengeance on revolutionaries, at its height in 1815.⁽⁵⁾

In February 1815, Mackintosh reviewed some of Constant's works in the Edinburgh Review and considered the prospects for France.⁽⁶⁾ The coup effected by Napoleon had been possible because of the policy

1 Considerations, III, 291-6.

2 S. Mellon The Political Uses of History, 30.

3 Reboul Le mythe anglais dans la littérature française sous la restauration, 97-102, 109-115, 171-80.

4 Constant to Mackintosh, 5 August, 4 November and 17 December 1815, B.M.Add. MSS 52452.

5 De Broglie to Mackintosh, 8 October 1815, B.M.Add. MSS 52452.

6 Edinburgh Review, XXIV, February 1815, 505-537.

of the Congress, the extremism of the royalists, the state of the army, and the condition and character of the French people. The Hundred Days had taken the form of a 'bloodless and orderly military sedition'; yet its causes could only be understood by beginning to balance the revolutionary account:

The French Revolution was a destruction of great abuses, executed with much violence, injustice, and inhumanity. The destruction of abuses is, in itself, and, for so much, a good. Injustice and inhumanity would cease to be vices, if they were not productive of great mischief to society. (1)

The redistribution of property during the revolution had proved to be fatal to the cause of liberty. The absence of great landowners, of a class of landed gentry, and the subdivision of great estates, naturally tended to favour either despotism or democracy.⁽²⁾ The middle classes and the peasantry now also had a stake in the disputed property of the French Revolution. And there was still support for the revolution among the mobs of the towns, the Protestants, and the remnants of the Jacobins, led by the regicides. He estimated the strength of the liberal party gloomily:

This party, whose principles are decisively favourable to limited monarchy and indeed to the general outline of the institutions of Great Britain, had some strength among the reasoners of the capital, but represented no interest and no opinion in the country at large. Whatever popularity they latterly appeared to possess, arose but too probably from the momentary concurrence, in opposition to the court, of those who were really their most irreconcilable enemies - the discontented ^{Revolutionists} and concealed Napoleonists. (3)

1 Ibid., XXIV, 518.

2 This argument came to be common among liberal, and liberal conservative aristocrats, long before Tocqueville. See Zeldin 'English Ideals in French Politics' Historical Journal, 1959, 46-58.

3 Edinburgh Review, XXIV, 529.

Constant was, Mackintosh acknowledged, by far the most outstanding literary representative of the liberals, 'unquestionably the first political writer of the Continent and apparently the ablest man in France'.⁽¹⁾ He admired Constant's work De l'usurpation, and thought his tract on ministerial responsibility an admirable study of English practice. In many ways the two men shared similar political views; yet Mackintosh failed to see the depth of resentment against foreign occupation that led Constant to support Napoleon during the Hundred Days. Like Mme de Stael he could not condone this abatement of hostilities.⁽²⁾ Though Constant saw much of Mackintosh in England during his visit in 1816, he did not share Mme de Stael's unbounded enthusiasm for English institutions, and the correspondence between the two men did not continue. Intellectually they had close affinities; but temperamentally they were at opposite poles.

Mackintosh was, clearly, concerned and interested in the spread of constitutionalist principles abroad; in Parliament during these years the foreign policy of the government within the international order was his principal concern. He first set out his position in detail after his return from India, in a series of letters to Lord Grey. The discomfiture of Napoleon remained for him, in 1813, the one great objective, beside which all other parliamentary issues appeared insignificant; the prosecution of the Peninsular War had been the one subject on which he had ventured secretly to differ with Grey. Nevertheless, at this time he saw the advisability of considering negotiations for peace, and, if necessary, of encouraging peace petitions

1 Ibid, XXIV, 530.

2 Mme de Stael to Mackintosh, 12 juin 1815. Bib.pub. et univ. de Genève.

from the country.⁽¹⁾ Grey's response was typically unenthusiastic:

I should very much object to Petitions^{on the principle} urged at the beginning of this session, and I am sorry to say on other occasions by Whitbread, conceiving that no possible measure could be devised with a better prospect of rendering Peace absolutely unattainable, than a Proposal forced upon the ministers by such^{an} evidence of the impatience or rather of the despair of the people. (2)

Fundamentally, as the correspondence makes clear, there was little difference on important issues between Grey and himself at this time; yet he did urge Grey, as so many others had done, to take on all occasions a firmer and more coherent party line.⁽³⁾ During the autumn of 1813, while Mme de Stael was in England, he urged Grey to clarify his views on peace and war in Europe. In an attempt, Mackintosh declared, to extract Lord Grey's attitude to the foreign policy of Britain, he would reconstruct his own position. The major interest of the Whig party, from Lord Somers to Fox, had been the preservation of the balance of power in Europe; the war conducted by Pitt in the 1790's, and that resumed after the Peace of Amiens, had not fitted the Whig canons. But it had been necessary to free the Peninsula from foreign domination and:

If the above short retrospect of your foreign policy be agreeable to truth, I humbly conceive that the Whig party is at liberty, if not bound in consistency with all its former maxims and counsels to support the war in present circumstances for just, reasonable & well-defined objects.

In the Peninsula, and in Germany, there seemed some possibility that war might redress the balance of power, and in this situation:

1 Mackintosh to Grey, 25 December 1812. Grey MSS, University of Durham.

2 Grey to Mackintosh, 2 January 1813, B.M.Add. MSS 52452; Mackintosh nevertheless proceeded to draft in his own hand at least one petition for peace. Draft of petition, with a letter from J. Wedgwood to Mackintosh, 4 January 1813. Wedgwood Papers, 9859-60-11, University of Keele

3 Mackintosh to Grey, 1 October 1813, Grey Papers. See also the drafts of this letter, dated 23 September 1813, B.M.Add. MSS 52452.

Does it not appear to you that a frank strenuous support by the Whig party of a war for such an object, on the express condition that no reasonable opportunity for Peace is suffered to pass, would be not in the strictest unison with their principles as well as agreeable to the sound maxim of an honest and public prudence. (1)

Grey could not be persuaded to lead his party at the beginning of the next session; but he was prepared to admit how far his views on the war had changed. New circumstances had totally altered the issues; the failure of the enemy in Russia, the British successes in Spain, and above all the new principle on which the coalition rested:

It is the principle which first animated France against her invaders. It is a war rather of nations than of governments & to such a war, produced, and directed as you say, to a national and legitimate object, & rendered necessary in its continuance by the impossibility of peace I could not hesitate to give my support. (2)

Mackintosh and Grey continued to correspond over the peace negotiations; Grey inclined to think that an offer of peace, rejected by France, should be a sine qua non of continuing support for the war. Mackintosh attempted to minimise the necessity. But most significant was the fact that the principle of supporting a people in arms, which some of the Whigs had recognised at an earlier stage of the Spanish war, had taken shape in the minds of the Whig leadership; the way was prepared for what was perhaps the most distinctive characteristic of the opposition in the postwar years, its concern for nationalism abroad. (3)

Mackintosh's first efforts in Parliament were made in defence of this principle. In December 1813 he spoke with vigour against the

1 Ibid.

2 Grey to Mackintosh, 10 October 1813. B.M.Add. MSS 52452.

3 Mackintosh to Grey, 18 October 1813, Grey papers. Grey to Mackintosh 24 October and 5 December 1813, B.M.Add. MSS 52452. A. Mitchell The Whigs in Opposition, 1815-30, Oxford 1967, 18.

assumption by the Prince of Orange of the sovereignty of the United Provinces; he accused the government of conniving at the destruction of an ancient republic. He has been called 'by far the most virulent critic of the Dutch restoration'; the Dutch ambassador ascribed his assault to the influence of Mme de Stael, then in London.⁽¹⁾ Though Mackintosh withdrew allegations against Castlereagh, he made it clear that he deplored the levity with which Dutch independence was being treated. There is no doubt that on this occasion Mackintosh was badly informed on the state of Dutch feeling, and that many of his colleagues disapproved. But his criticisms spurred the Dutch government to distribute memoranda on the proposed constitution to leading politicians; in March 1814 Mackintosh signified his entire approval of it.⁽²⁾ In praising the patriotism of the Dutch, he referred also to the gallant defence by the Swiss of their nation against invaders; to treat the Helvetic nation as a hostile power, as the allies were planning to do, would be a breach of international law - the character and spirit of the Swiss people entitled them to a certain forbearance.⁽³⁾ His maiden speech, therefore, was not an unqualified success; but it did forshadow the direction of his future interests. Switzerland and Holland, two small nations, with a history of constitutional government, and of independence from the greater powers, exemplified the power of historic traditions of freedom.

1 Parliamentary Debates, XXVII, 282; G.J.Renier Great Britain and the Establishment of the Kingdom of the Netherlands, London 1930, 150.

2 P.D. XXVII, 301-17; Renier op.cit. 151.

3 P.D., XXVII, 313-5.

Mackintosh was similarly concerned to defend the rights of small nations when the issue of Norway came before the Commons. Liverpool had made it clear that the Norwegian movement for independence would be opposed by Britain, bound by treaty to Bernadotte. Mackintosh, attacking the treaty concluded between Russia and Sweden in 1812, had moved from his earlier admiration for Bernadotte to sympathise with the predicament of Norway, apparently a pawn to be awarded to the ruler of Sweden. Such a treaty, signed without the consent of the people of Norway, neither Grotius nor Pufendorf could possibly consider valid.

Whether the insurrection in Norway were the act of the Norwegian peoples, or the work of a mere faction, had, it seemed, become a question; and this question the British ministers proposed truly to decide by starving the whole... (1)

More significant than these early speeches was Mackintosh's own motion on the transfer of Genoa to Piedmont - again a question of an ancient, if oligarchical city, forced to abandon its historic rights. The situation here was aggravated by the pledges given to that city by Lord William Bentinck, the inveterate Whig constitutionalist of the Mediterranean. Mackintosh's attack on this transfer was part of a wider assault on the actions and claims of the Congress of Vienna. The Congress appeared to have usurped power over all territory once occupied by France, and the three great military powers of Europe to be disposing of ancient nations as they saw fit, with no respect at all for opinion in those countries:

an avowed adoption of those principles of partition or plunder, the prime source of all the calamities of Europe,

¹ P.D. XXVII, 845-50. For the background to the Norwegian situation, see Webster The Foreign Policy of Castlereagh, 1812-15, 306-9.

which originated with the spoilers of Poland, and copied on a gigantic scale by the leaders of France and now returned to their first seat, without changing their nature, or abating their malignity. What is it but declaring that the tenure of dominion throughout Europe is to be the pleasure of an oligarchy of sovereigns at Vienna, who have no more right to Genoa than the county of Middlesex. (1)

To the Genoese, Bentinck had appeared in every respect as a plenipotentiary, with authority to take no decisive act except on the will of the inhabitants. Quoting an old work by Gentz, Mackintosh argued that such a subsequent exercise of power by the Congress violated all the principles of the balance of power. And even without Britain's pledge of faith to Genoa, nothing could condone - certainly the theorists of international law had never tried to do so - such a blatant disregard of the rights of the inhabitants, who in this case abhorred the Piedmontese:

It is for this reason, among others, that I detest and execrate the modern doctrine of rounding territory and following national boundaries, and melting small states into masses, and substituting lines of defence and right and left flanks, instead of justice and the law of nations, and ancient possessions and national feeling; the system of Louis XIV and Napoleon, of the spoilers of Poland and the spoilers of Norway and Genoa - the system which the noble lord when newly arrived from the Congress, and deeply imbued with its doctrines, had delivered in his ample and elaborate invective, against the memory and principles of ancient Europe, when he condensed the whole new system into two phrases so characteristic of his reverence for the rights of nations, and his tenderness for their feelings, that they ought not to be easily forgotten - when he told us, speaking of this very antipathy of Genoa to Piedmont 'that great questions are not to be influenced by popular impressions' and 'a people may be happy without independence'. (2)

Since the war against Napoleon had owed its success to the popular spirit, it was natural to expect that victory should not involve

1 P.D. XXIX, 91D.

2 P.D. XXX, 919-20.

merely a change of masters. The policy of the Congress was in no sense comparable to that of preserving the balance of power in Europe; if the equilibrium in Europe was to be maintained, the independence of nations, and the paramount principle, that of national spirit and character, could be safeguarded. The Congress system would create a triumvirate with absolute power over the peoples of Europe, ignoring the historic rights of nations.

The ancient principle was to preserve all those states which had been transformed by time and nature, which were animated by national spirit, and distinguished by the diversity of character which gave scope to every variety of talent and virtue; whose character was often preserved and whose nationality was sometimes created by those very irregularities of frontier and inequalities of strength, of which a shallow policy complained, - to preserve all those states, down to the smallest, first by their own national spirit, and secondly, by that mutual jealousy which made every great power the opponent of the dangerous ambitions of every other. It was ~~the~~ preserve of nations, living bodies, produced by the hand of nature, not to form artificial dead machines, called states, by the words and parchment of ~~the~~ diplomatic act. (1)

At the heart of liberal constitutionalism, there was an ancient republicanism. (2)

Mackintosh's speech was greatly admired, both in England and in Europe. To Sismondi, he alone could redeem the English Parliament from timidity in the face of the Holy Alliance. (3) And soon afterwards Sismondi made his own appeal to Mackintosh, to try to convey to him the real spirit of the French nation. The whole nation had not risen behind Bonaparte, only the army. Yet the mistakes, the

1 Ibid, XXX, 927.

2 Ibid, XXX, 891-935. For the Genoese situation, see Webster *op. cit.* 286-7.

3 Sismondi to his mother, 22 fevrier 1815. C. Pellegrini (ed.) G.C.G. de Sismondi *Epistolario*, 4 vols., Firenze, 1931-5, II, 104.

overbearing claims, and the weakness of the Bourbons had not endeared them to the people, and if the ministers of the Holy Alliance, led by Castlereagh, continued to misjudge the situation, disastrous conflict would ensue. Sismondi was defending his own conduct, and that of Constant; in the Hundred Days they had seen the rising of a people which could not tolerate foreign occupation, or Bourbon claims:

....cette nation belliqueuse une fois complètement armée, cette nation unanime dans son mépris pour l'incapacité et la pusillanimité des Bourbons, dans sa haine pour la noblesse et le clergé, dans son culte pour l'honneur national et l'indépendance, ne sera ni vaincue au dehors par les étrangers, ni asservie au dedans par un despote. (1)

Even Mme de Stael, writing to Mackintosh a few months later, agreed that the hatred of the French nation for the rule of foreigners had inspired this reaction.⁽²⁾ And, perhaps responding, Mackintosh argued in the Commons that the sentiments of the French nation should have been very apparent, and that the ministers and the allies generally had been guilty of great negligence.⁽³⁾

By 1815 the future lines of Whig foreign policy had been established. The principle of national independence was cardinal; this guaranteed the existence of small and large nations, and, in this way, the equilibrium of Europe. National sovereignty had its own legitimacy, the legitimacy of justice and international law, which could be defended against the monarchical legitimism of the Holy Alliance; debates could be tediously occupied with references to the obscurer writers

1 Sismondi to Mackintosh, 29 April, 1815, Epistolario, II, 175-82.

2 Mme de Stael to Mackintosh, 12 June 1815. Bib. pub. et univ. de Genève.

3 P.D. XXX, 737-48.

on international law, and Mackintosh was probably the worst offender in this respect. Further elaboration of Whig policy centred on its relationship to the policy and personality of Canning; some, like Lord Grey, never ceased to regard him as a charlatan: others, like Mackintosh, whose previous acquaintance with Canning had predisposed him to sympathy, were generally punctilious in exempting him from their condemnation of Tory policies.

The upsurge of revolutions on the continent in 1820 and 1821, challenging the hold of the three powers of the Holy Alliance on Europe, seemed in England to provide opportunities for a new onslaught on Castlereagh. In February 1821, Mackintosh brought in a motion demanding further clarification of the position of the government at Troppau. Castlereagh's declaration of non-intervention was insufficient to satisfy the Whig opposition. They demanded an absolute rejection of the principles on which the powers at Troppau based their policy, and which they planned to apply first of all in restoring Naples to its lawful sovereign:

These three sovereigns, who took upon themselves the lordship paramount of the whole of Europe - who treated monarchies as their vassals and nations as their slaves had arrived at a conclusion founded on that ancient and equitable maxim 'might is right'. They had issued, in the plenitude of power newly usurped but arrogantly vaunted, their mandate 'for the better government of kingdoms'. (1)

Such principles could not be condemned too strongly, contravening as they did the fundamental law of nations, of monarchies, nullifying the rights of every man in Europe:

It was in effect a proposition for encamping a whole horde of cossacks or croats in Hyde Park. (2)

1 P.D. 2nd ser., IV, 840.

2 Ibid, 2nd ser., IV, 842.

The three powers had had the insolence to assume that Great Britain would accept this reduction of her own sovereignty, and indeed maintained that Castlereagh had led them to expect his own consent. For this they must have had some reason. The ministry's excuses, relating to the behaviour of the Neapolitan rebels were irrelevant; the question in dispute was one of national independence only. The paradoxical issue of the Whig assault on the Holy Alliance was the Whig defence of the Carbonari, against whom the Holy Alliance claimed to be fighting. Mackintosh argued that not even the threat of international conspiracy and revolution could justify armed intervention of this kind. Only Metternich in Vienna could claim that a neighbouring constitutional state might sow subversion and unrest in Italy - it might indeed disturb a military despotism. No account should be taken of the totally reactionary assertions of supremacy by Austria, Russia, and Prussia, contained in the original manifesto of the Holy Alliance:

These royal professors of theology and ethics had also forgotten that one of the first inferences to be drawn from the Gospel was, that slavery was not to be tolerated; that the history of Christianity proved that in the sight of God all men were equal; that the Gospel was first preached to the poor by instruments as poor as the hearers; and what was most strange of all was that they had shut their eyes against the conclusion that as the Christian religion had been the means of rescuing all the Christian world from slavery. It ought not now to be made the pretext for subjugating all its professors to the arbitrary will of two or three exalted individuals. (1)

Mackintosh believed that there was not a sufficient case for a censure, but certainly for an enquiry. Practical expediency might have forced Castlereagh not to condemn the action of the powers; but the most significant aspect of the case was that a new 'law of nations' had appeared in Europe and had to be countered.⁽²⁾

1 Ibid, 2nd ser., IV, 863.

2 Ibid, 2nd ser., IV, 837-65, 893-4, 1376-9.

Mackintosh's most frequent European correspondent was now Sismondi, who entirely shared his own outlook on European politics, and whose information was valuable to Mackintosh. His speeches were backed by it; and he was able to confide in Sismondi his most extravagant hopes:

I received your excellent tract on the designs of Austria against Italy, of which I gave copies to the most important Members of Opposition in both Houses of Parliament. I brought the subject of Naples before the House of Commons on the 21st inst with such success that in the opinion of many if the discussion had occurred two months earlier it might have produced some effect at Troppau. (1)

As the intentions and actions of the three powers were more clearly revealed, there were protests from the opposition at the abandonment of all British obligation to Sicily - led, naturally, by Lord William Bentinck, whom Mackintosh resolutely seconded. The abolition of the Sicilian constitution in 1817 had been a betrayal by the King of Naples, prompted by his secret agreement with Austria. There had been some opposition to the constitution set up by Bentinck, but two years had been far too short a time to judge its practicability. Mackintosh demanded some recognition that the Sicilians should have something of their ancient privileges, even their old, oligarchic, corrupt constitution. On the same day, he denounced the declaration of the allied sovereigns at Laibach; to him, he said, the greatest political evil was not revolution, but perpetual slavery under the despotism of a military alliance. (2)

1 Mackintosh to Sismondi, 27 February 1821. Biblioteca Comunale di Pescia. See also Sismondi to Mackintosh, 27 March 1821. B.M.Add. MSS 52453.

2 P.D., 2nd ser., V, 1247-54, 1258-60.

Yet even before this, he had come up against the difficulties of preaching against Castlereagh's policy of non-intervention; in the future the Whigs' unbridled championship of constitutionalism was to imply bellicosity almost to the point of countenancing war. The Foreign Enlistment Bill, introduced by the government in June 1819, was intended to prevent British nationals enlisting in the services of the revolted Spanish colonies; this was taken by the opposition to be a breach of neutrality. The idea that the Commons would pass such a measure at the request of the King of Spain instantly pointed to such a breach; Mackintosh argued that the bill was designed for the benefit of Spain alone. Though Castlereagh had impugned the motives of merchants with regard to the freedom of the Spanish colonies, Mackintosh suggested that the interests of mankind more frequently coincided with the happiness of mankind than did those of politicians. Their hopes were founded:

on the successful assertion of freedom! of freedom! that parent of all good! that parent of industry! that parent of talent! that parent of heroism! that parent of every virtue! The fate of South America would be accessory to the wealth of British merchants only as it becomes accessory to the dignity and happiness of ^{the race of} man.

This speech was apparently cheered for several minutes by members from both sides of the House. ⁽¹⁾

Mackintosh's interest in the future of the Spanish American Republics continued to be evident. The Spanish revolution of 1820, and the subsequent invasion of Spain by France naturally roused all the Whig concern for the independence of nations. Indeed, it began to appear that intervention against the French was being considered, at least by Mackintosh; he attacked the indifference shown by ministers

1 P.D. XL, 1091-1102, 1125.

in studiously maintaining an attitude of non-intervention. There was no doubt that France had injured the balance of power, and strengthened her own hand in Europe by this act of aggression. In the face of such aggrandisement, England's forbearance was dangerous.⁽¹⁾ To Canning, capable of holding back the few foolhardy interventionists, the law of nations cited so frequently by opposition speakers was a mere myth, to be produced in a convenient cause. Yet Mackintosh came to be more and more satisfied with the direction of Canning's foreign policy; in March 1824 he withdrew a threatened motion on the production of information on British relations with Spain and Spanish America, because of a satisfactory declaration of intent by Canning.

In June, however, Mackintosh had an opportunity to expand on British policy towards Spanish America, when he presented the petition of London merchants for the recognition of the independence of South America.⁽²⁾ In this he represented members of considerable commercial houses, belonging to both parties, all concerned and well-informed about the South American colonies. He suggested that the term 'recognition' could be used in two different senses, the one the technical meaning of the international lawyers, the other implying all measures of practical policy between nations, which imply independence. Such tacit recognition was not in any way a deviation from neutrality. He went on to consider successive declarations of government policy towards South America, all of which implied

1 P.D., 2nd ser., VIII, 1399-1414.

2 On this, see H. Temperley The Foreign Policy of Canning, 1822-7. England, the New-Holy Alliance, and the New World, London, 2nd edition 1966, 131-156.

a progressive move towards recognition. And since President Monroe's message to Congress, Britain had been joined in this policy by the other great commonwealth of the world. Great Britain's policy should be clear; in the face of the threatened European despotism of the great military powers, she could begin to exchange the alliances of kings for the friendship of nations. There were still, of course, unsolved problems. There was, firstly, a bare possibility that Spain might regain her dominion, but, considering the vastness of the continent, its unity, both offensive and defensive, against Spain, and the comparative strength of Spain, it was hardly likely that a contest was still possible. Secondly, it was still debatable how far these newly grown states could maintain internal stability; but if this was to be made a criterion, Spain herself had just been occupied and invaded. The examples of history proved that a young nation frequently went through periods of disorder and turmoil before reconciling the claims of order and liberty. Nowhere had the condition of internal peace been imposed as a necessary one by other states. The national interest demanded even more that in such a situation British interests, especially commercial interests, should be protected. The merchants of London, Liverpool, and Manchester had combined to urge the government to take this course. But the argument which Mackintosh pressed home with the most eloquence was the immense benefit of expanding trade; his speech reached its climax with a peroration on the benefits of free trade:

It is twice blessed - it blesses the giver as well as the receiver. It consists in the interchange of the means of enjoyment, and its very essence is to employ one part of mankind in contributing to the happiness of others...What is the instrument by which the savage is to be raised from a state in which he has nothing human but the form, but commerce, by exciting in his mind the desire of accommodation

and enjoyment, and by presenting to him the means of obtaining these advantages? It is thus only that he is gradually raised to industry, to foresight, to a respect for property, to a sense of justice, to a perception of the necessity of laws. What corrects his prejudices against foreign nations and dissimilar races? Commercial intercourse. What slowly teaches him that the quiet and well-being of the most distant regions have some tendency to promote the prosperity of his own? What at length disposed him even to tolerate those religious differences which led him to regard the greater part of ~~the~~ species with abhorrence? Nothing but the intercourse and familiarity into which commerce alone could have tempted him. What diffuses wealth and thereby increases the leisure which calls into existence the works of genius, the discoveries of science and the inventions of art? What transports just opinions of government into enslaved countries, raises the importance of the middle and lower classes of society and thus reforms social institutions and establishes equal liberty? What but commerce the real civiliser and emancipator of mankind. To open South America to the ~~comforts~~ of the world is in reality not merely to multiply the enjoyments and comforts of her people, but to render them partakers of the arts, and knowledge, and morality, and liberty, of civilised men. (1)

Recognition was an act consistent with neutrality, beneficial to liberty and to commerce, saving deserving nations from the grip of the Holy Alliance.⁽²⁾ Canning expressed his entire agreement with Mackintosh's analysis. He waited, he said, merely for further information - in reality for the consent of his colleagues - before arriving at the firm decision which he eventually took.⁽³⁾

There were other areas of Europe where Mackintosh defended the cause of liberty. The Greek rebels had won the support of most English radicals and Whigs, and Mackintosh was no exception. In 1824 he wrote to Sir Robert Wilson:

¹ P.D. 2nd ser., XI, 1387-8.

² Ibid, 2nd ser., XI, 1344-94.

³ Ibid, 2nd ser., XI, 1394-1400.

I defended the conduct of the English Government towards Greece against Marechals and liberals at Paris. The Proclamation had not then appeared. As far as I am now informed I should have thought it impossible to defend that Act which seems to me to be taking advantage of the inaccurate language of the Greek Proclamation. I shall be mortified if I find it as bad as it now appears to be; for I really wish well to Canning's part of the government. What a misfortune that there was nobody at Missolonghi acquainted with the ~~principles~~^{forms} of international law. (1)

Even the fraudulent scandals that reverberated around the heads of the Greek Committee in London did not tarnish enthusiasm for the cause.⁽²⁾ Canning's eventual despatch of a fleet to the Mediterranean, under Sir Edward Codrington, naturally met with his approval.⁽³⁾

In a vote of thanks to the admiral, proposed by the Whig opposition after Canning's death, Mackintosh defended such intervention. Even if without precedent it was justified by common humanity, and by the necessity of preserving the peace of Christendom. Ministers were urged to continue the policy of their predecessors, in fulfilling their obligations to Greece, as set out in the Treaty of London.⁽⁴⁾ When the final settlement of Greece took place, Mackintosh was one of the first to speak in its favour, quoting Fox's known enmity to Turkish institutions as a reason for Whig satisfaction at the eventual fulfilment of the Treaty.⁽⁵⁾

He spoke at greater length, however, on the fate of Portugal. The action of Canning in sending troops to succour the constitutional party, and the triumph of Donna Maria met with his unreserved approbation.⁽⁶⁾

1 Mackintosh to Sir Robert Wilson, 15 October 1824. B.M.Add. MSS 30115, F.28 Mackintosh had just returned from a visit to Paris.

2 Mackintosh to Sismondi, 19 November 1825. Biblioteca Comunale di Pescia.

3 Mackintosh to Holland, 3 December 1827, B.M.Add. MSS 51653.

4 P.D. 2nd ser., XVIII, 399-410.

5 Ibid, 2nd ser., XXII, 556-8. For a more detailed discussion of Mackintosh's interest in Greece, see Donald R. Neat 'The Parliamentary Career of Sir James Mackintosh'. Unpublished Ph.D. dissertation. University of Kentucky, 1965, 144-6.

6 P.D. 2nd ser., XVII, 1178-90.

Mackintosh had already pleaded the cause of Donna Maria in great detail, in the Edinburgh Review, in December 1826.⁽¹⁾ He followed her subsequent overthrow, and the restoration of Don Miguel, her uncle, with much concern, urging that the British government should not act in any way which might imply the recognition of Don Miguel, or the abandonment of the constitutionalist party which supported Donna Maria.⁽²⁾ It was possible to reinterpret the state of neutrality from which the British government observed events in Portugal; neutrality could imply friendly relations with a neighbour state, or an attitude bordering on hostility.⁽³⁾ British treatment of the troops of Donna Maria, who had sought refuge in England, had led her to look to France rather than England for help; England found herself guaranteeing the territory of a despotic and feeble government.⁽⁴⁾ In his very last speech in the House, Mackintosh again defended the right of British subjects to join an expedition to Portugal against Don Miguel, in this acting with the French government, whom he believed had good reason for their policy. The position of Britain as an ally of Portugal was in these circumstances essentially false.⁽⁵⁾

Mackintosh's concern for nations who wished to assert an historic right to independence, and an historic constitution, or who, alternatively, looked to England as a constitutional model, made him one of the most prominent critics of the government in the field of

1 Edinburgh Review, XL, December 1826, 199-247.

2 P.D. 2nd ser., XIX, 1205, 1545.

3 Ibid. 2nd ser., XXI, 1601-24.

4 Ibid. 2nd ser., XXIV, 178-83.

5 P.D., 3rd series, X, 126-30. For a more detailed discussion of Mackintosh's interventions on behalf of Portugal, see Neat 'Parliamentary Career of Sir James Mackintosh', 148-56.

foreign affairs during this period.⁽¹⁾ His speeches were marred by a pedantic and doctrinaire approach; back-bench members ridiculed him as a 'Scotch lawyer'.⁽²⁾ Mme de Stael's label - 'Scotland polished at Paris' - was, however, more appropriate: Mackintosh's desire to justify his policies intellectually should be compared with the historical and the philosophical content of the liberal politics of the Restoration. Mackintosh visited Paris in 1824, and renewed his acquaintance with Constant and others.⁽³⁾ He had already begun to feel that those Frenchmen who had opted entirely for the legacy of the revolution and the sovereignty of the people were endangering social stability, the security of property, and the coming of the Reign of Liberty. Those who would carry the flag of 'true European Whiggism' were men like de Broglie and Guizot, the 'doctrinaires' who had attempted to harmonize the revolution and the monarchy in the legitimacy of the Charter and the sovereignty of reason that it embodied.⁽⁴⁾ To some Whigs it seemed evident that this was an attempt which could be paralleled by their own, perhaps more rhetorical, search for abstract standards by which to measure government and policy. Mackintosh's visit to Paris merely confirmed his pessimism about the future of the liberals.⁽⁵⁾ In 1829 he spent a holiday with the de Broglies; in 1830 he gave the revolution in France a qualified approval, regretting that Guizot and de Broglie were so soon supplanted

1 C. Webster The Foreign Policy of Castlereagh, 1815-22, 21.

2 Memoirs, II, 329.

3 Ibid, II, 413-24; B.M.Add. MSS 52446, passim.

4 Mackintosh to Auguste de Stael, 9 February 1820. De Pange, 'Mme de Stael and her English correspondents', II, 349.

5 'I have a good deal of interesting conversation with Guizot and Gallois, who have, I think, contributed to correct my notions of the state of France, which as long as I pretend to take any part in public affairs is an object of great importance. It seems to be the opinion of judicious persons of different shades in politics that the Liberals have done as much mischief to Liberty as the Radicals in England'. Entry in Journal, 27 September 1824, B.M.Add. MSS 52446.

by the stronger ministries of Casimir-Périer and Lafitte.⁽¹⁾

Comparing the French and English situations, he saw both governments moving with difficulty between two contending factions, each claiming absolute right to sovereignty, with the government holding a just balance in the name of reason and commonsense.⁽²⁾ Mackintosh's political and intellectual perspective enabled him to realise the force of nationalist movements, even if their constitutionalism was sometimes in doubt. This very perspective lays him open to a charge of hypocrisy; like the French 'doctrinaires' his distrust of radicalism led him to take up a stance at home which was socially conservative and politically only mildly reformist. The Whig concern for liberty appeared to its best in a European light.

1 Mackintosh to John Allen, 3 November 1830?. B.M.Add. MSS 52182.

2 Mackintosh to Sismondi, 27 March 1831. Biblioteca Comunale di Pescia.

VIII MACKINTOSH AND THE WHIG PARTY

The Whig party in the early nineteenth century suffered from disunity, apathy and the burden of its past; moreover, it completely failed to offer any coherent and viable alternatives to government policy. The principles of Whiggism, which Mackintosh preached so constantly, seemed to have little to do with the business of opposition. The very existence of the Whig party as an entity at this time has been questioned; but analysis has shown that voting patterns and party consciousness developed sufficiently during this period for it to be an established fact of political life.⁽¹⁾ Nevertheless it was still largely a coalition of different groups and interests. After his return to politics in 1812, Mackintosh attached himself with determination to the group allied around the memory of Fox, a group centring on Holland House, and united sporadically by the leadership of Grey.

Yet at the beginning of Mackintosh's career in Parliament his position still seemed uncertain, and his loyalty to the Whigs suspect. Spencer Perceval offered to place him in a seat at the government's disposal, and even considered offering him the office of President of the Board of Control;⁽²⁾ Mackintosh declined, and accepted instead a seat for the county of Nairn, belonging to Lord Cawdor, a Whig magnate who was reassured by such a proof of loyalty to the opposition.

1 For the situation facing the Whig party in 1812, see M. Roberts The Whig Party 1807-12, London 1939, 330-405. Generally, see A. Mitchell The Whigs in Opposition 1815-30, Oxford, 1967; A. Aspinall 'English Party Organisation in the Early Nineteenth Century', English Historical Review, XLI, 1926, 389-411.

2 Memoirs, II, 252-5, 291-2; entry in journal, 12 May 1812, B.M. Add. MSS 52440.

Mackintosh's claims were not forgotten in the negotiations that followed Perceval's assassination, between Wellesley, and Grey and Grenville.⁽¹⁾ Even after these failed efforts continued to be made to detach him from the opposition, through Colonel MacMahon, the Prince Regent's secretary.⁽²⁾ In March 1813, unofficial approaches were made to Mackintosh, with the knowledge of Lord Liverpool, to tempt him with a place of £1000 a year, and the prospect of a government seat.⁽³⁾ This offer too was refused, and in June 1813 Mackintosh became the member for Nairnshire, retaining this seat until the dissolution of 1819. He then had to rely on the resources of Holland House, and his hopes of Lord Lansdowne. After much negotiation, he was returned for the Duke of Devonshire's pocket borough, Knareborough, as the colleague of George Tierney; he held this seat until his death, and in 1831 paid tribute to the liberty of action which he had always enjoyed.⁽⁴⁾

Mackintosh's well-defined views on the need for a strong opposition led him, soon after his return, to urge Lord Grey to declare party policy boldly, and to organise his following. Gradually, however, disappointment over the failure of the party to blend together its disparate elements, or make any impact on the government brought continuing depression over its future. To Mackintosh, the tactics of the Mountain, the Ultra-Whigs, seemed to betray the party on

1 Memoirs, II, 255, 290-2.

2 Col. MacMahon to Mackintosh, 1 October 1812. B.M.Add. MSS 52452; Mackintosh to MacMahon, 7 October 1812 and 8 January 1813, MacMahon to the Prince Regent, 8 January 1813. A. Aspinall The Letters of George IV, 3 vols, Cambridge, 1938, I, Nos. 172, 211-2. In January 1813, MacMahon thought Lord Cawdor a 'connexion which he does not appear to be over firmly wedded to & which a little attention and address in the progress of the session may entirely wean him from'.

3 H.G. Street to Mackintosh, 10 March 1813. B.M.Add. MSS 52452.

4 Journal, January-February 1818, B.M.Add. MSS 52443; P.D. 3rd series, IV 679-80.

the left;⁽¹⁾ on the right, the Grenvilles were 'still united to us by honour, but loosely in political opinions'.⁽²⁾ Occasional successes such as the defeat of the government over income tax in 1816, raised his hopes, but, on the whole, Mackintosh's view of the Whig party was, like that of most other observers, a gloomy one.⁽³⁾ His own position in the party was fairly high in the years after his return; but his failing health, sporadic attendance, and inability to win popularity in the House, prevented him from fully establishing himself in the inner counsels of the Whigs. At times he may have aspired to play a more defined role; there were rumours to the effect that he might have replaced Ponsonby as leader of the party in the Commons in 1813.⁽⁴⁾ Tierney, tactfully, told Mackintosh in March 1820 that the task was too much for him, but that since Mackintosh's health would not stand the strain, there was no alternative but Brougham - who, in the event, of course, refused.⁽⁵⁾ Mackintosh's disillusionment with the Whig party, and his future prospects, led him, in the 1820's, to be much less hostile towards a ministry which included Canning, and to support the ministry that Canning formed in 1827. By then, however, he could no longer command hopes of office.

In December 1812, Mackintosh summarised his own political programme in a letter to Grey:

1 Mackintosh to Sismondi, 11 November 1816. Biblioteca Comunale di Pescia.

2 Mackintosh to Mme de Stael, 13 January 1816. De Pange 'Mme de Stael and her English correspondents', II, 339.

3 Entry in journal, 28 July 1817. B.M.Add. MSS 52442; Mackintosh to Holland, 18 December 1821. B.M. 51653.

4 S.H. Romilly (ed.) Letters to Ivy, 231. Whitbread and his followers suspected this as a part of a plan to split them off from the main body of Whigs, concocted by Lord Holland and others.

5 Entry in journal, 13 March 1820, B.M.Add. MSS 52444.

My present politics are vigorous war against the Bank of England, the Protestant Ascendancy, allow me to add the French in the Peninsula & the East India Company - Conciliation with America & a declaration through Prussia & Russia of our desire to negotiate a general peace. (1)

The situation abroad was his first concern at the time; the East India Company was already doomed. But the Protestant ascendancy and the Bank of England were still formidable; and for some time Mackintosh was preoccupied rather in the traditional Whig field of religious and civil liberties, and with the reform of the legal system, than with the need for parliamentary reform.

The cause of religious liberty was one which occupied Mackintosh throughout his parliamentary career; but the question of Catholic emancipation related essentially to the condition of Ireland. Mackintosh stated his views on this very soon after his return to England.⁽²⁾

In June 1812 the opposition had secured a majority in the Commons for emancipation of the Catholics, conditional on the security of the government's right to veto the appointment of Catholic bishops; but the question of the veto had split the English supporters of Catholic emancipation, ready to accept this, from the majority of Irish Catholics, for whom such a concession was not merely analogous to the 'Gallican' solution, but involved political subjection to the English. In the Edinburgh Review, Mackintosh emphasises, first of all, that:

Political evils are the sources from which all other remediable evils in the condition of Ireland have flowed. (3)

1 Mackintosh to Grey, 15 December 1812, Grey papers.

2 Review of Edward Gibbon Wakefield Account of Ireland, Statistical and Political, 2 vols., London 1812, Edinburgh Review, XX, November 1812, 346-69.

3 Ibid., XX, 348.

The degradation of the Irish peasant could only be attributed to a total lack of confidence in the law and the administration of justice. The English government should act, in its own interest, to bind the Catholic gentry to the English connexion, by admitting them to the army, navy, and public services; while at the same time it should demonstrate the value of that connexion. Emancipation was not too strong a word for the Irish question; it was truly one of delivering a people from slavery, where the new tolerance of enlightenment had not reached, and where the personal opinion of a prince alone had stood in the way of deliverance. That obstacle being removed, nothing should stand in the way; moreover, the grant of emancipation should be made ungrudgingly, as of right, and without securities as a precondition. Securities such as the veto should depend entirely on the free consent of the people.⁽¹⁾ There is no evidence to show, however, that as the veto controversy continued, and O'Connell's views gained the ascendancy in Ireland, Mackintosh took any active part. The cause still retained a majority in the Commons; in 1817 the Tory government threw posts in the army and navy open to the Catholics.⁽²⁾

The death of George III, the prospective reconstitution of the Cabinet, and events on the continent, further encouraged the supporters of emancipation.⁽³⁾ During the 1820's Mackintosh was rather more prominent among these. In 1821 Plunket introduced two measures,

1 Ibid, XX, 367-8.

2 E. Halévy A History of the English People in the Nineteenth Century, II; The Liberal Awakening, (1815-30), London, 1961 edition, 141.

3 In April 1819, Mackintosh attended a meeting of supporters of Catholic emancipation at the house of Henry Grattan. H. Grattan, Memoirs of the Life and Times of the Rt. Hon. Henry Grattan, 5 vols., London, 1846, V, 538.

providing for admission to almost all offices, with, again, the security of the veto.⁽¹⁾ Mackintosh spoke for the measure, emphasising again the need to conciliate the English and Irish Catholic gentry, the natural leaders of Catholic society. The dangers of staffing the armed forces with those denied any possibility of civil advancement were infinitely greater than those of admitting Catholics within the constitution; again the bogey of military despotism, of an over-mighty army, appeared. Mackintosh as an orthodox Whig did not view the Established Church as existing symbiotically within the Protestant constitution. Whig Christianity was inclusive, undogmatic, and optimistic, if it was anything.⁽²⁾ The preservation of civil disabilities did nothing to aid the Church of England; a securely established church depended rather on the affection of the people for their religious authorities, and on the efficiency of the government in providing peaceful protection for the exercise of religion. The judicature was not dependent on the enforcement of the established creeds; he himself in India had dealt justice to those of many creeds. Mackintosh saw toleration as long overdue in England; in Austria, Russia, Prussia, enlightenment had long since, at least formally, done away with religious disabilities.⁽³⁾ He challenged those detractors of the Catholic Church who saw it as an insidious, authoritarian ultramontanist power; its character was changing. Though he hardly

1 See G.I. Machin The Catholic Question in English Politics, 1820-30, Oxford, 1964, 25-31.

2 'Whig Christianity seems to have been largely a blend of the classical precepts of morality and the moral sense of the Scottish philosopher improved by Christ's special injunctions to toleration and forbearance, and substituting for the dreary ambition of establishing Christ's kingdom on earth the nearer but no less desirable object of the Reign of Liberty.' G.F.A. Best 'The Whigs and the Church Establishment in the age of Grey and Holland', History, XLV, 1960, 107.

3 P.D. 2nd ser., IV, 1004-13, 1294-8, 1435-9, 1483-5.

touched directly on the miserable economic existence of the Irish peasantry, he forecast the misery to come for England, when the influx of Irish, without prospects in their own land, would advance on English cities.⁽¹⁾ Catholic emancipation was, simultaneously, therefore: a political remedy for the condition of Ireland; a means of increasing the influence of the native aristocracy of Ireland; an advance towards the principle of a secular, tolerant, state; and, lastly, a blow against the royal conscience.

In the mid-1820's however, it was a major question of public security. In 1825, the government, greatly alarmed at the organisation and growth of the Catholic Association under O'Connell, introduced a bill aimed at its suppression; most of those who supported Catholic emancipation supported the bill in the interests of stability.

Mackintosh, Burdett, and Brougham were the only members who spoke out against it vigorously.⁽²⁾ Mackintosh defended the behaviour of the

Catholic Association, spoke of the provocation of the Orangemen, and made it clear that no repressive measures could succeed where the

only answer was equal constitutional rights for all.⁽³⁾ In 1829, however, he agreed to the raising of the franchise qualification from 40s to £10, because he saw no alternative, and felt this kind of security to be a lesser evil.⁽⁴⁾ On Ireland, the Whigs went in

general far beyond the Catholic Tories in stressing that tolerance was not merely an expedient method of calming the Irish, but an

1 Ibid, 2nd ser., XIX, 548-67.

2 J.A. Reynolds The Catholic Emancipation Crisis in Ireland, 1823-9, Yale, 1954, 116-7.

3 P.D. 2nd ser., XII, 376-400.

4 Ibid, 2nd ser., 1381-4.

essential principle of justice; for Mackintosh, certainly, consciousness of British misrule in Ireland meant that emancipation was 'a kind of restorative justice'.⁽¹⁾

Mackintosh was entirely consistent in supporting with vigour the claims of Jews to civil emancipation - indeed he would not have denied the rights of citizenship to the natives of India:

It was the first maxim of political society that they were not to withhold the advantages of political society for which allegiance was paid, unless it were distinctly proved that great advantages would result to the state from not giving the individuals all the privileges claimed. That was the rule of justice. Every man born under the constitution was entitled to all the privileges of the Constitution. He would repeat, as had been stated before, that this maxim ought to be applied to the Jews.

It was no longer possible, after 1829, to maintain an exclusive relationship between the State and the Anglican Church. It was a Christian duty to admit men of all religions to the enjoyment of civil rights.

Jews of wealth and property deserved their place in the state; poor and degraded Jews could be restored after centuries of oppression to their place as citizens.⁽²⁾ Most of the Whig leaders supported Jewish emancipation, and in the early rounds of the struggle came near to success; but it was not true of Mackintosh, as it was of Macaulay, that 'the Old Whig demand for the separation of religious from secular considerations had been replanted in utilitarian soil'.⁽³⁾ Like Lord Holland, Mackintosh appealed to the simple justice of the exchange of allegiance in return for the grant of citizenship.⁽⁴⁾

1 U. Henriques Religious Toleration in England, 1787-1833, London, 1961, 165.

2 P.D. 2nd ser., XXIII, 1314-23.

3 Henriques, op.cit., 201.

4 Ibid, 202.

A lesser known aspect of the Whig concern for civil liberties was their attitude towards the government's treatment of aliens, whom it was empowered to supervise by the Aliens Act of 1816, renewed regularly until 1826.⁽¹⁾ Mackintosh attacked the Crown's interpretation of its authorities, Blackstone and Pufendorf; he argued that Parliament had the right to control the activities of the executive in this field.⁽²⁾ In the debate on the introduction of the Aliens Bill in 1816, Mackintosh declared he could find no historical precedent for the extension of the Crown's prerogative in this direction; the law passed in 1793 had been introduced on grounds of exceptional peril to the state. The new bill would expose twenty thousand residents to the evils of close supervision and arbitrary deportation, without the protection of an open court of law. He moved for an amendment to allow an accused alien time to prepare a defence and to summon witnesses before the Privy Council; the amendment was defeated.⁽³⁾ His fears were greatly exaggerated but he nevertheless continued to oppose the bill's renewal regularly, defending especially those foreign residents settled in England before 1814, who could hardly be suspected as dangerous agitators.⁽⁴⁾ The debate tended to revolve around the interpretation and the citation of legal authorities; Mackintosh tended to appear here, where the practical injustice done was very small, at his most pedantic and irrelevant.

1 See on this J.R. Dinwiddy 'The Use of the Crown's Power of Deportation under the Aliens Act 1793-1826', Bulletin of the Institute of Historical Research, XLI, November 1968, 207-11.

2 P.D., XXX, 327.

3 Ibid, XXXIV, 467-9, 629, 931.

4 Ibid, 2nd ser., I, 790-6, II, 324-31, VII, 810-5, 1092-1105, X, 1358-65, XXXVIII, 824-8, 1299-301.

Mackintosh took some part also in the movement for the abolition of slavery. The work of Wilberforce for the abolition of the slave trade had concerned Mackintosh ever since their first conversations in the 1790's,⁽¹⁾ and on his return from India, Wilberforce soon enlisted his talents. As the campaign to exert pressure on the British government for the abolition of the slave trade by other European countries grew, Mackintosh, on offering his services was invited by Wilberforce to act as a member of the committee of the African Institution; Mackintosh also acted with the leader of the abolitionists in trying to persuade Mme de Staël to write something for the African Institution.⁽²⁾ In Parliament, in common with others, he presented petitions for the abolition of the slave trade:

....England, by her observance of such liberal policy, acquired a right to call upon France to concur with her in regulating the whole colonial system upon that paramount policy which consisted in justice. If one policy required from England the restitution of colonies, another, and a proper policy required from France the abolition of the slave trade. ⁽³⁾

Mackintosh remained in touch with the leaders of the movement, and spoke occasionally in Parliament for the cause. The treaty concluded in 1818 with Spain, limiting her trade to South of the Equator, and granting the British right to search other vessels, seemed to him to be of unique significance:

The introduction of a right of search, in the maritime law of Europe, for the first time during peace, was a precedent of the utmost importance, and a most

4 R. and S. Wilberforce, Life of William Wilberforce, I, 359; Memoirs, I, 403.

2 Wilberforce to Mackintosh, 14 April 1814. B.M.Add. MSS 52452; Mackintosh to Grey, 3 June 1814, Grey papers.

3 P.D. XXVIII, 846; see also his Draft Resolutions on the Slave Trade. n.d. but c. 1814. B.M.Add. MSS 52453. For the campaign see F. Klingberg The Anti-Slavery Movement in England, Yale 1926, 137-57.

valuable confession of the paramount magnitude of the object for which nations thus sacrificed their ancient usages and their most inveterate jealousies. (1)

He continued to press the government to secure similar agreements, in particular from Spain and Portugal.⁽²⁾ It is not apparent that he took any great part in the movement for the registration of slaves between 1814 and 1818; but from 1818 onwards he was more and more concerned at the individual cases of ill-treatment that were brought to light.⁽³⁾ Mackintosh was involved in the movement for the total abolition of slavery within the British Empire from its formal inception in 1823;⁽⁴⁾ with Brougham he was prominent in the defence of the greatest martyr of the abolitionist cause, the Reverend John Smith of Demerara, who, accused of fomenting insurrection by the planters, had died in prison before the sentence of execution passed on him could be carried out.⁽⁵⁾ Yet in his speeches Mackintosh showed himself intensely wary of the consequences of sudden emancipation - and was prepared to grant time to the planters - while maintaining that the progress of the abolitionist cause could not be for ever delayed.⁽⁶⁾ It is doubtful whether Mackintosh was ever a member of the inner group which directed the anti-slavery movement, though he was a regular supporter, and was frequently allotted a part in the parliamentary campaign.⁽⁷⁾ In 1828, for example, Wilberforce,

1 P.D. XXXVII, 250-4; Klingberg *op.cit.*, 161-4.

2 P.D. XL, 1546-7; *ibid*, 2nd ser., VII, 1414-6, X, 1424-5.

3 P.D. XXXVIII, 315-8; *ibid*, 2nd ser., V, 1071-2.

4 Fowell Buxton to Mackintosh, 30 November 1823. Charles Buxton (ed.) *Memoirs of Sir Thomas Fowell Buxton Bt, with selections from his correspondence*, London, 1848, 135-6; Mackintosh to Zachary Macaulay, 30 June 1824. *Viscountess Knutsford Life and Letters of Zachary Macaulay*, London, 1900, 421-2; G.R. Mellon *British Imperial Trusteeship, 1783-1850*, London 1951, 83.

5 On this see C. New *The Life of Henry Brougham to 1830*, Oxford 1961, 289-97; Klingberg *op.cit.* 219-22.

6 P.D., 2nd ser., XI, 400-1, 1033-68.

7 *Life and Letters of Zachary Macaulay*, 630; *Life of Wilberforce*, IV, 367, 382, V, 123.

himself rather withdrawn from the struggle, urged Mackintosh to assert the right of the British parliament to legislate for the West Indian colonies, to frustrate Wellington's plan to delegate governmental responsibility to the colonial assemblies; and this Mackintosh did, though very briefly.⁽¹⁾ The anti-slavery campaign was for him a secondary cause, to which he never fully committed his talents.

The Whig party, generally, was very much more concerned with the encroachments on the liberty of the individual that were so apparent in England in the immediate post-war period. The extent of public distress in the country seemed to offer a solid foundation for an assault on the ministry, forestalling, it was hoped, radical agitation.⁽²⁾ Though the party agreed that action was needed, the elements making up the party were divided on the extent of the distress that faced them, and the correct policy to be followed. George Tierney thought that the Whigs should take the lead in demanding reform; those who followed Grenville saw this as a dangerous precedent, and the condition of the country as merely temporary.⁽³⁾ The Grenvillite argument was defeated in Whig counsels; Mackintosh attempted to patch over some of the differences, though, in spite of the need for unity, he could agree neither with Grenville's unreasoning fear of the populace, nor with his support for the coercive measures of the government. A split was clearly inevitable.⁽⁴⁾ When the repressive measures of

¹ Wilberforce to Mackintosh, 21 July 1828. B.M.Add. MSS 52453; P.D. 2nd ser., XIX, 1779.

² E.g. Mackintosh to Lord Nugent, 8 November 1816, N.L.S. MSS 2257, f. 146.

³ Mitchell *Whigs in Opposition*, 100-9.

⁴ Entry in journal, 3 February 1817. B.M. Add. MSS 52442.

1817 passed through the House in 1817, Mackintosh was one of the few members of the Opposition who actively harassed the Solicitor-General with suggested amendments to the Seditious Meetings Bill. In particular, he attacked the infliction of the death penalty for infringement of the riot acts, the ambiguities in the act relating to criticism of the government itself, and the inclusion of the Spencean Philanthropists among the associations considered to be unlawful combinations.⁽¹⁾

The threat to order, and the need to consider party tactics, increased the difficulties of evolving a unified policy on the issue of civil liberties. There was little hesitation in the party about condemning both the Manchester magistrates of Peterloo, and the incendiary radicals there; but further questions had to be asked. Would it be to the advantage of the Whigs to organise a campaign in protest? And did the Whigs, indeed, have any place at all in this conflict between government and people? In the long term there was surely a need to reconsider the relation of the Whig party to the nation; immediately, however, the quandary was brutally evident:

It seems to me that our popular strength when we are not only without but against both Radicals and Tories is not such as to give us a reasonable hope that we can guide these meetings. I should think that they will either stop short of us or go beyond us and I should hardly be able to decide whether our condition would be worse after being defeated by the Tories or conquering by the treacherous and odious help of the radicals. With these apprehensions I should have preferred...an Address from a certain number of members of both houses, unusual or perhaps unexampled as that measure is, to the more ordinary expedient of County meetings. (2)

1 P.D. XXXV, 933, 937, 939-40, 944-6.

2 Mackintosh to Lord Holland, 15 September 1819. B.M.Add. MSS 51653.

To Lord Holland, repressive measures of any kind were contrary to the spirit which Charles James Fox had left the party. The Whigs should consider two points in facing the government: first, the efficacy of coercive measures when the government had insufficient force to put them into action, and secondly, the need to counter popular hostility towards authority and government - and this was by far the more important. It was necessary to refocus the attention of the Whigs on conciliatory measures, on the reduction of taxes, retrenchment in government expenditure, and a measure of parliamentary reform.⁽¹⁾ Holland, in this, was influenced more by the persuasion of Brougham than by the timidity of Mackintosh. In general the Whig response lacked enthusiasm;⁽²⁾ and this was apparent in Mackintosh's formulation of their policy:

My system is that we should:

I Declare our real opinion of the danger of the country, which I think very great, and proclaim irreconcilable war against the radicals.

II That we should of course call for inquiry on Manchester.

III That we should not very pertinaciously oppose ourselves to measures of precaution...

IV That we should declare in the frankest and strongest manner for your reformatory measures, and that you should bring them forward, if possible, before the adjournment. (3)

In the Commons the eloquence that the Rev. John Smith of Demerara had been able to command was noticeably lacking. Mackintosh followed the party line in demanding an inquiry into the conduct of the Manchester magistrates, without committing himself to any comment on the legality

1 Holland to Mackintosh, 10 November 1819. B.M.Add. MSS 51653.

2 Mitchell *The Whigs in Opposition*, 128.

3 Mackintosh to Lord John Russell, 14 October 1819. R. Russell (ed.) *The Early Correspondence of Lord John Russell*, 1805-40, 2 vols., London, 1913, I, 205-10.

of the meeting of 16 August.⁽¹⁾ Nevertheless the public agitation of these years did stimulate him to work more energetically for reforms both in the law and of the constitution.⁽²⁾

The opposition had, however, also to define their position on the Six Acts introduced by the government during the early part of the session of 1819. Mackintosh was here most interested in repulsing the inroads made on the freedom of the press by the Blasphemous Libels Bill and the Newspaper Stamp Duties Bill.⁽³⁾ In his speeches, he proclaimed great sympathy with the 'honourable, well-conducted and well-deserving Press', whose influence and respectability had increased so much during his own life:

The true policy to be adopted in such a case was to conciliate and attach every new interest, to make it coalesce with the institutions of the state, to render it the ally of the laws and the government, and not to place it under unnecessary regulations and restrictions. ⁽⁴⁾

For Mackintosh the power of the press seemed to have an almost metaphysical significance, which had to be related to the natural progress and enlightenment of mankind:

The press had a power in the present state of society of which it was foolish to complain. This state of things depended on causes beyond the control of Parliament. They could no more control the order of things in society than they could control the planets in their courses. ⁽⁵⁾

The purpose of the amendment which he proposed was to redefine much more carefully the offence of seditious libel; to class instigation

¹ P.D., XL, 111-9.

² See below, 275-286, 292-99.

³ For the provisions of these bills, see W.H. Wickwar The Struggle for the Freedom of the Press, 1819-32, London, 1928, 135-41.

⁴ P.D., XLI, 1479-1529.

⁵ Ibid, XLI, 1542.

to rebellion together with the mere political libel, the offspring of the party system, was a gross injustice, at a time when a very firm distinction should be drawn between the respectability of one section of the Press, and the brazen libellousness of another. He recalled his own life as a journalist; he praised the men who edited the well-conducted Press, paying tribute especially to James Perry of the Morning Chronicle. Yet Mackintosh was not, basically, opposed to a certain efficient and limited censorship on those whom there was good reason to suspect of subversive motives.⁽¹⁾ In this speech, one of his most memorable, his adulation of the Press rose to such heights as to rouse the hostility of others, especially Canning, to whom this interpretation of the indefinable power of public opinion, essentially at one with the state of society, seemed intrinsically despotic.⁽²⁾ Mackintosh also spoke strongly against the proposed restrictions on the publication of political pamphlets and periodicals, where securities would have to be granted by printers and editors, and magistrates be empowered to enforce the acts.⁽³⁾ But, overall, there was clearly a contrast between the civil rights of those who were suspected of insurrection, and the rights of those who represented the increasing property and stability of the nation.

The Whig attitude to doctrines of economic liberalism clearly also bore some relation to their view of the condition of England; but this attitude was as yet fundamentally uncertain. Mackintosh

1 Ibid, XLI, 1529-44, 1552-7; on the debates see Wickwar op.cit. 148-50.

2 P.D. XLI, 1544-9.

3 Ibid, XLI, 1479-94.

himself had for a long time been convinced of the validity of the economic arguments; he had voted against the corn laws of 1816.⁽¹⁾ But he could still consider transgressing these doctrines in order to succour the distressed. In 1819 he saw public works as an immediate answer that offered some relief; in the long term emigration alone could solve the nation's problems.⁽²⁾ He could not yet preach laissez-faire in its entirety; in considering those measures taken in 1817-19 to lessen the cost of the poor law, Mackintosh disapproved the inhumane reduction of relief to paupers. Such a policy was unlikely to increase the overall well-being of the nation. It was Utopian to rely too heavily on private philanthropists.⁽³⁾ He urged also the extension of the principles of the original poor law to Scotland.⁽⁴⁾ On the other hand, where wages and conditions of work were concerned, he was entirely in favour of removing all restrictions; in common with Huskisson and the Ricardians he supported the repeal of the Spitalfields Acts, which had placed the control of silk manufacture there in the hands of the J.P.'s:

Sir James Mackintosh wished to take that opportunity of making a declaration, which he should have made long ago, had not ill health prevented him. He highly approved of all that the chancellor of the exchequer had done upon this subject, and he could not, with any regard to consistency or common decency agree in the opinion, that ministers had not been sufficiently slow and cautious in resorting, even thus limitedly, to the principles of free trade; because he should thereby condemn the friends by whom he was surrounded, but especially himself; he having long had occasion to complain that ministers were too tardy in adopting self-evident principles. ⁽⁵⁾

1 Ibid, 2nd ser., X, 1230.

2 Mackintosh to J. Wedgwood, 12 August 1819, Keele MSS 9869-11; Mackintosh to Holland, 15 August 1819. B.M.Add. MSS 51653.

3 P.D. XL, 1128-30.

4 Ibid, XLI, 1398-9.

5 P.D. 2nd ser., X, 1221.

But it is not possible to find many declarations of this kind; political economy was not a major interest. And, much later, in 1831, as Parliament was beginning to realise the conditions that existed in the nation's factories, and Michael Sadler brought in a petition on the labour of children in factories, Mackintosh declared that he could not set up the laws of political economy against the existence of such conditions, and made it known that he would support any move for their improvement.⁽¹⁾

It has been shown that Mackintosh's concern for the reform of the criminal law was longstanding; the direction, and the methods of his parliamentary campaign for reform reflected his earlier experience. He supported Romilly's campaign in the House between 1814 and 1817; in 1814, for example, he strongly seconded Romilly's assault on the antique punishment of 'corruption of blood', the carrying of a punishment to the criminal's heirs and issue.⁽²⁾ But Mackintosh's first active move against a major aspect of the criminal law came in 1818, when he forced the House to face the facts of the alarming increase in crimes of forgery since this had become a capital offence. Even in Bombay the savagery of this punishment had shocked him; in England the combination of the savage penal code, and the shortage of specie, made the number of convictions very alarming. He was able to attack two targets simultaneously:

He was prepared to show that the present system of ^{our} paper currency had created an enormous public evil; that it had tainted and corrupted the morals of a large class of the people; and that it had occasioned an increase of crime with a rapidity unexampled in the history of law and ~~order~~ ^{of civil society}. J(3)

1 Ibid, 3rd ser. IX, 1097.

2 On this, see L. Radzinowicz A History of English Criminal Law, 4 vols, Cambridge, 1948- , I, 518-9. I have relied on this authoritative account here.

3 P.D., XXXVIII, 273-8, 284.

The statistics that he presented did indeed seem to show an extraordinary rise in the number of convictions for forgery after the suspension of cash payments in 1797; prosecutions by both the Bank of England and the Royal Mint had increased on this scale. Capital punishment had not deterred the criminal, though other crimes, treated with greater leniency, were diminishing. Mackintosh moved that the figures of Bank prosecutions, with the convictions secured, for the years from 1816 onwards, and comparable figures for the years before 1797, should be placed before the House. He attracted much support; his figures had startled the House, and the motion was carried without a division. It was followed, on 13 May 1818 by one 'for a committee to inquire into the means of more effectually preventing the forgery of banknotes'. Mackintosh's tactics combined a part of the programme already outlined to Grey - war on the privilege of the Bank of England - and the humanitarian cause to which he was to devote the next few years. Already he claimed to have established the accountability of the Directors of the Bank to Parliament; the figures that were produced fully justified his expectations. Forgery had shot to the head of the list of capital crimes; and the costs of each prosecution by the Bank had to be borne. It should no longer be possible to consider the Bank merely as a private company; it was necessary to discuss the wider social effects of the circulation of paper money in the country. In America, paper money circulated, but was convertible into specie, and forgery was not a capital crime; there it was extremely rare.⁽¹⁾ Even the Chancellor of the Exchequer, Vansittart, agreed to an inquiry; and a commission was appointed to look into the figures.⁽²⁾

1 P.D. XXXVIII, 273-8, 284.

2 Ibid, XXXVIII, 671-81, 696-9.

In December 1818, Mackintosh gave the problem a wider airing, in the Edinburgh Review; his figures seemed to prove that prosecutions by the Bank of England in the years after 1798 accounted for the immense increase in prosecutions and capital convictions. The commissioners' names included directors of the Bank; there was only one real solution:

it must be universally seen, and, we hope, will be authoritatively stated, that the resumption of cash payments is the only effectual remedy against the multiplication of forgeries, - which multiplied executions seem^{not} in the least degree to have retarded, - and which must ultimately involve in general confusion all the dealings and transactions of men. (1)

Romilly's campaign had already begun to change the atmosphere of public opinion; while the government had taken the unpopular side, and declared itself on the side of Paley's doctrine of the deterrent value of capital punishment, a movement of opinion was reflected in increasingly narrow divisions in the House. And on 28 January 1819, Mackintosh declared:

he had long felt and lamented the imperfect state of our penal code; it cried aloud for amendment, and it was his intention to have made a distinct proposition to the House on the subject.

On learning that the government also had an inquiry in mind, but one in which the question of the penal code would be secondary to the state of the prisons, he announced that his determination was unchanged. (2) Such a combined task went far beyond the resources of any parliamentary committee. (3) On 1 March Castlereagh moved for a select committee on the state of gaols and other prisons, and argued strongly for an

1 'Increase of Forgeries' Edinburgh Review, XXXI, December 1818, 203-14.

2 P.D. XXXIX, 94-6.

3 Ibid., XXXIX, 493-7, 502.

extension of its powers to cover all aspects of the criminal code. On the following day Mackintosh argued, in bringing forward his own motion for a committee of inquiry into the criminal laws that such a committee was quite inadequate to its task, and that its instructions directly excluded consideration of the question of capital punishment. Mackintosh saw his own motion as fully based on earlier precedents for action; in 1750 and in 1772, the recommendations of committees set up to inquire into the question has been passed by the Commons, and defeated by the Lords. He had no wish to recast the criminal code radically, to abolish the punishment of death altogether, or to do away with the royal prerogative of pardon. The problem, as he saw it, was to restore to harmony the statute book and the public opinion of the country:

It is one of the greatest evils which can befall a country when the criminal law and the virtuous feelings of the community are in hostility to each other.

The increase in crime had to be seen in connection with the social changes which the nation was undergoing:

Every labourer, by he knew not what mysterious power, by causes which he could not discover or comprehend, found his wages diminished at least in proportion of a third. His comforts were curtailed and his enjoyments destroyed by the operation of the paper system which was to him like the workings of a malignant fiend that could be traced only in their effects. Can anyone doubt that this diminution of the incomes of so many individuals from the highest to the lowest classes of society, was one of the chief sources of the increase of crime? (1)

Mackintosh divided capital offences into three kinds: firstly murder and murderous offences; secondly arson, highway robbery, piracy, and other offences for which the death penalty should remain; thirdly a class of some 150 offences, including frauds, larcenies,

1 Ibid, XXXIX, 786.

and a number of almost frivolous offences, for which the death penalty was never carried out. The debatable ground was occupied by frauds, larcenies, and forgeries. The existing system had the result of deterring prosecutions for minor offences; bankers declined to prosecute forgers, and the revenue officers had themselves asked for the repeal of the statutes imposing capital punishment for a breach of the revenue laws. A reduction of the number of capital crimes would lead to much greater awe of the final penalty which society held in its hands; it would remove a tendency to sympathise with the criminal, and for juries to commit perjury:

The just and faithful administration of the law, in all its branches, is the great bond of society: the point at which authority and obedience meet most nearly. If those who hold the reins of government, instead of attempting a remedy, content themselves with vain lamentations at the growth of crime, if they refuse to conform the laws to the opinions and dispositions of the public - that growth must continue to spread a just alarm. (1)

Mackintosh was ably seconded in the debate by Fowell Buxton and Wilberforce, and it was apparent that he had won over the vote of a number of members of the House; the committee was voted by a majority of nineteen. Once appointed, with Mackintosh as Chairman, it included Scarlett, Wilberforce, Althorp, Alderman Wood, Fowell Buxton, Brougham, Lord John Russell, besides the Attorney-General, the Solicitor-General, and other members of the government.

The appointment of this committee was a landmark in the history of criminal law reform. The leading authority has written, on its report:

1 P.D. XXXIX, 777-800.

The Report of the Select Committee of 1819 is a document of permanent value; it constitutes an outstanding accomplishment of a large project. No official investigation of such a scope into the criminal law and its effects had ever been attempted previously. The Committee reviewed the general state of crime in the community, assessed the punishments awarded by the Courts, and estimated the attitude of the public to the penal system of the country: but further than this they submitted a constructive plan of reform. (1)

The committee was remarkable in selecting witnesses from various social classes and professional groups, and treating them as representative spokesmen. Equally remarkable was the committee's 'empirical approach' to the collection of statistical returns on the state of crime and the administration of criminal justice in certain districts of the country, going back in places to the seventeenth century. 'It is to be doubted whether any other country possesses equally well-arranged returns for so early a period'.⁽²⁾ The inquiry bore mainly on the offences of larceny and forgery, though it also touched on the need for consolidation and digestion of parts of the criminal law, and the nature of alternative punishments. The committee's recommendations included the repeal of a number of obsolete statutes, and the amendment of others, commuting the capital sentence to transportation or imprisonment. Much more controversial were its recommendations on larceny, where repeal of three capital statutes was advised: stealing in a shop to the amount of five shillings (10 and 11 Will. 3 c23), stealing in a dwellinghouse to the amount of thirty shillings (12 Anne st 1, c7) and stealing from vessels in navigable rivers to the amount of forty shillings (24 Geo. 2 c45); transportation or imprisonment was to be substituted. Thirdly, reform of the forgery

1 Radzinowicz op.cit., I, 540-1.

2 Ibid, I, 544,

law was proposed for the first time. For the first offence of uttering forged notes, transportation or imprisonment was to be the sentence, though the death penalty would remain for the second offence, and for the forgery of Bank of England notes. Punishment for the possession of forged notes was to be at the discretion of the Court of the Bank of England.⁽¹⁾

There is much in the Report of this committee that is typical of Mackintosh's approach and experience: the preoccupation with extracting the voice of public opinion, the emphasis on the need for a reliable set of statistics, on which conclusions were to be based,⁽²⁾ and the concern which he had brought to the reform of the forgery laws.⁽³⁾ The interesting suggestion of courts especially for the trying of small causes was also very probably derived from Mackintosh's Indian experience.⁽⁴⁾ There is no doubt that although in this Mackintosh was working with Fowell Buxton and others, in the Report of this committee he left perhaps his greatest mark. In the short term, however, his attempts to carry its recommendations into operation met with very little success. On 9 May 1820, Mackintosh moved for the reappointment of the committee and for permission to bring in six bills embodying the committee's recommendations; he obtained leave to do this, but was later forced to withdraw the bills dealing with the law on forgery, and with larceny, except for that on stealing

1 'Report from the Select Committee on the Criminal Laws (1819)'. Parliamentary Papers (Accounts and Papers, 1819), VIII, 3-16.

2 See above, VI, 180.

3 See above VI, 181,

4 P.P. (1819), VIII, 16; and see above, VI, 184.

from shops.⁽¹⁾ He also withdrew certain provisions from the acts dealing with obsolete statutes, including that imposing capital punishment for a false entry in a marriage register. In the end, therefore, the recommendations that succeeded were the Capital Felonies Repeal Bill which repealed a group of quite obsolete offences (though because of the intervention of Eldon in the Lords, eight capital provisions of the Waltham Black Act remained in force); the Capital Felonies Commutation of Punishment Bill, in which transportation or imprisonment were substituted for capital punishment, a bill which, again, after emerging from the Lords covered only four of the nineteen statutes which committee had included; and the act repealing the death penalty for privately stealing in a shop, though the Lords' amendment preserved the death penalty for goods worth over £15.⁽²⁾

In May 1821 Mackintosh and Fowell Buxton brought before the House the 'Forgery Punishment Mitigation Bill' in a further attempt to carry out the recommendations of the committee. Fowell Buxton made an exceptionally powerful speech, and it was clear that the temper of the House was against outright rejection of the bill. Mackintosh, however, was forced to make so many concessions, preserving capital punishment for the forgery of Bank of England notes, country bank notes, wills, entries to marriage registers, and forgeries connected with the transfers of stock, that the bill was almost unrecognisable; after a later debate Londonderry then put the motion to the vote, at an unexpected moment when the bill's supporters were

1 P.D. 2nd ser., I, 227-35, 480, 1338.

2 Radzinowicz, op.cit., I, 551-6; P.D. 2nd ser., I, 1338, II, 137-8.

absent. This stratagem lost the bill by six votes.⁽¹⁾

After such a succession of disappointments, Mackintosh no longer made the effort to bring such bills into the House; however, when Peel entered the Cabinet as Home Secretary just before the opening of the session of 1822, Mackintosh determined that the House should at least commit themselves to the principles of reform which he had urged on them so many times, that 'the efficacy of the criminal laws would be increased by an abatement of their rigour'. On this occasion it was joined by a resolution that such reform should be accompanied by a strengthening of the police and a reconsideration of the punishment of transportation. Although Mackintosh was prepared to grant these concessions, the principles on which he would base reform were still the same. Punishments should be framed according to the degree of criminality shown, not according to the deterrent effect which the judge believed that the punishment would have, as William Paley had laid down. Mackintosh's own principles, were, he argued, acknowledged in almost every civilised country; the contrast with France was particularly striking. And he qualified his suggestion that the police might be strengthened:

The principal object of police should be to repress disorder; the next, to detect crime. To repress disorder, it would be necessary that more effectual means should be adopted; but he should object to means derived from too great a restriction of human action which he would call tyranny; and in the detection of crime, he should deprecate as much as possible, a system of espionage, by which he believed a nation lost more than it could gain on the score of morality; for it was in itself a more fertile source of crime than any other. The most effectual means, in his opinion, for the detection of crime, would be the mitigation of punishment.

¹ Ibid, V, 965-70, 999-1000, 1099-1104, 1111.

In discussing the penalties of transportation and imprisonment, he showed that unusual care for reformation rather than deterrence which Radzinowicz has noted.⁽¹⁾ Prisoners should be placed according to their crimes, and the relatively innocent should not be corrupted; the government should encourage the work of societies for the reformation of prisoners. Peel gave Mackintosh a sympathetic hearing; but the reformer was not satisfied until he had secured a formal majority of 117 to 101, to act in the next session.⁽²⁾

Peel had already begun to concern himself with the questions which he regarded as essential auxiliaries to the reform of the criminal law: the police of the metropolis, and the reform of the prison structure.⁽³⁾ He was, however, still firmly determined to keep changes in the criminal law in his own hands. The clash came in May 1823, when Mackintosh, acting on his motion of the previous year, defended his view of the criminal code as most efficacious when it was, in effect, a school of morals, when motive and guilt, rather than the actual mischief caused, determined the punishment. Moral depravity depended on a variety of circumstances, not on the amount of money stolen or forged. He moved nine resolutions which would have put into effect the recommendations of the committee of 1819.⁽⁴⁾ Peel then declared that he was now ready to redeem the pledge which he had given; the difference between Mackintosh and himself was one

1 Radzinowicz, op.cit., I, 563, n.34.

2 P.D. 2nd ser., VII, 790-8, 804.

3 For Peel's work, see N. Gash Mr. Secretary Peel, London 1961, 308-343.

4 P.D. 2nd ser., IX, 397-420, 431-2.

of degree only. He went on to place his own modified programme before the House. During the next two months, five bills were passed which abolished capital punishment in the case of larcenies up to 40s. in shops and on rivers (but not in dwellinghouses), repealed the capital clauses of the Waltham Black Act, and other obsolete statutes. Peel continued to consolidate and amend the criminal law code throughout the 1820's. For him the aims of simplification and consolidation came some way before those of humanitarian relief; advancing with caution, he preferred to leave a good deal to administrative discretion. There is some evidence to show that Mackintosh resented this pre-emption of his own labours; there was virtually no communication between them.⁽¹⁾ Mackintosh did not speak in the House on legal reform between 1824 and 1830, when he returned again to the issue of the capital statutes for forgery. In April 1830 Peel introduced a massive act consolidating the statutes on forgery, but still including the death penalty; Mackintosh presented a number of petitions for the total abolition of the death penalty in cases of forgery.⁽²⁾ In this he was successful, in that his own amendment, to replace the death sentence by one of transportation or imprisonment, passed the Commons by a majority of thirteen. Though it was rejected by the Lords, the Commons passed it once again; though it was not, finally, passed, it was very evident that moderate opinion in parliament had been won to the cause of Mackintosh and Romilly. Denman carried the abolition in 1832, and in those two years no criminal was executed for forgery.⁽³⁾

1 The only letters that have survived are remarkably formal in tone. Mackintosh to Peel, 7 February 1826; Peel to Mackintosh 9 February 1826. B.M.Add. MSS 40385.

2 P.D. 3rd ser., XXIII, 1275, XXIV, 36, 328-9, 1032-43.

3 Gash Mr. Secretary Peel, 480-5.

Mackintosh's achievement was a considerable one; though Romilly had initiated the movement, it was Mackintosh who had broken through the parliamentary barriers of prejudice and apathy, and had begun to convince moderate opinion that the humanitarian case, the case for the reformation of the prisoner, had to be faced. He made it possible for Robert Peel to work with the grain of public opinion in this.

The traditional role of the opposition in Whig theory was markedly limited; constitutionally it consisted of the old programme of attacks on expenditure, placemen, and the royal prerogative. During this period this remained an essential element of the stock in trade of the party; yet by 1819 it was also clear to the Whigs that if they were to enjoy any kind of relationship with their electorate, such as it was, and with those outside it, they had to consider the reform of the representative system. Mackintosh was prominent both in these attacks on the executive, and in evolving a Whig position on parliamentary reform which seemed to differentiate their solution from that of the utilitarians and radicals.

In 1815, the Grenvillite wing of the party urged that the opposition confine itself to its traditional role of checking the expenditure of the executive, rather than considering the wider implications of the peace treaty; Holland and Grey wanted to raise the whole question of the imposition of the Bourbons on the French nation. The difference between them was a serious one, and the leaders were at odds. Mackintosh found a formula for agreement; he suggested that the party should concentrate its parliamentary efforts on attacking the military occupation of France, the size of the army estimates, and the danger of such a standing army to liberty.⁽¹⁾ The debate at

1 A. Mitchell The Whigs in Opposition, 81-93; Mackintosh to Holland n.d. (1811? Misdated), Holland to Mackintosh, 23 January 1816. B.M. Add. MSS 51653.

the beginning of the session went off better than the party had expected; and for the rest of the session they aimed to 'bring the government back to the true principles of the constitution'.⁽¹⁾

A further aspect of the peace treaty which Mackintosh chose to attack was the government view that the 'droits of the Crown', the rights of the Crown to treasure and prizes taken in war, extended to the indemnities included in the treaty. He intended in his motion of 15 May 1816 to establish the control of the Commons over money received in this way, and the right of the nation to money earned in war. Without citing precedents he claimed the spirit of the constitution to be in his favour; if this assumption of rights by the executive, together with the unparalleled rise in the army estimates, had succeeded, it would have been virtual counter-revolution. The money given regularly by France to support the British army, in itself an unconstitutional proceeding, could not be counted as a 'droit of the Crown', even although, and here he gave details, the Crown had already spent a part of that money. An indemnity should compensate a people; the king in this was only the hand of the state.⁽²⁾ The Chancellor of the Exchequer was apparently a little unnerved by this barrage; he granted Mackintosh's argument that the money made over by treaty belonged to the state rather than to the Crown.⁽³⁾ Later Mackintosh went so far as to prepare a bill on the subject, but this was postponed, and never materialised.⁽⁴⁾ In 1820 he backed Brougham's

1 Mitchell *op.cit.*, 92.

2 P.D. XXXIV, 517-48.

3 Ibid, XXXIV, 548-60.

4 Entries in journal, 25 April and 12 May 1817. B.M.Add. MSS 52442.

attempt to abolish these prerogatives.⁽¹⁾

Mackintosh took part only occasionally in the active campaign by Joseph Hume and others against government expenditure and sinecures. In 1822, his intervention was sparked off by a too aggressive defence of the Crown. Whigs did not, he proclaimed, object to what they called its legitimate influence:

A revenue of £60,000,000 and an army of 70,000 men, a large navy, the constant support of nine tenths of the patronage of India - these were the sources of just and legitimate influence, and to that influence he did not object

If the Crown claimed that sinecures were essential to the influence of the Crown, the nation would call that influence corruption.⁽²⁾

When Castlereagh resisted the House's discussion of diplomatic expenditure, as an usurpation of the power of the executive, Mackintosh attacked the scale of expenditure in many British embassies, and held up the diplomatic service of the United States of America as a model.⁽³⁾

The relationship between the executive and the legislature could be examined on a smaller scale, when the problems of the colonies came before the House; and in these Mackintosh was continually interested. In May 1821 he presented a petition from the people of Newfoundland, asking that they should be removed from the jurisdiction of courts-martial, and placed under the regular authority of local magistrates.⁽⁴⁾ Similarly he supported the struggle of the colonists of New South Wales to enjoy the liberties of English citizens;

1 P.D. 2nd ser., I, 139-47.

2 Ibid, VI, 1103-8.

3 Ibid, 2nd ser., VI, 63-42.

4 Ibid, 2nd ser., V, 1015-6.

with the majority of their community made up of convicts, the governor ruled by court-martial, with the power to deport colonists at will.⁽¹⁾

In 1828, Mackintosh presented a petition from the gentry, merchants and tradesmen of New South Wales for popular representation and trial by jury in their colony. As Huskisson introduced a bill revising their constitution into the House, Mackintosh gave notice that he would introduce two amendments seeking to extend trial by jury into the colony, and to provide for the free election of one third of the Legislative Council on a properties franchise.⁽²⁾ When he did this, in June, he argued that the branding of this colony with its criminal origins was a fatal step. The way to redeem it was to allow its inhabitants to develop and exercise their freedom. Those who paid their taxes would pay them more willingly if they were freely represented.⁽³⁾

When the difficult problems of Canada came before the House, Mackintosh insisted that the opinion of the Canadian people should be sought, before the arbitrary union of the two provinces of Upper and Lower Canada was effected:

He no more wished to see liberty imposed on a people than despotism; for every liberty imposed on a people did not deserve the name, and was little better than despotism. The people of Canada had no less than two years notice previous to the measure of 1791; whereas Parliament was now called upon to make a total change in their form of government without any notice, when they already enjoyed a free constitution. (4)

The French Canadians had a good case; and Mackintosh was primed by

1 Ibid, 2nd ser., IX, 1400-3.

2 Ibid, 2nd ser., XVIII, 1559, 1564-5.

3 Ibid, 2nd ser., 1456-9.

4 Ibid, 2nd ser., VII, 1199, 1730-1.

them, and seen as their spokesman in Parliament, though he refused to accept the position of agent offered to him.⁽¹⁾ His speeches were effective, and the bill was withdrawn. When, in 1828, a motion was brought forward for a committee to enquire into the government of Canada, Mackintosh played the same role. He considered the nature of the 'Great British Confederacy', as Labouchère called it:

I hold now, as I did then, that all the different portions of that confederacy are integral parts of the British empire; and, as such, entitled to the fullest protection. I hold that they are all held together as one great class, by an alliance prior in importance to any other, more binding upon us than any other treaty even entered into with any other state, and the fulfilment of which he can never desert without the sacrifice of a great moral duty. (2)

The home country had a duty to afford all protection from foreign nations, but it also had a duty to allow the colonists freedom to conduct their own internal affairs, to pay the expenses of their own government, and to impose no restrictions on their industry or trade. Mackintosh saw the continuing hostility of the Canadian people against the British government, for the past ten years, as a convincing indication that the ministry were at fault. The actions of the Governor of Quebec had given the House of Assembly there justified grievances and the attempt of Huskisson and Wilmot Horton to favour the British colonists was dangerous. To raise up English interests and the Protestant ascendancy was to invite the same running sore that England suffered in the Irish question. Men of all races, castes, and creeds, should be treated alike in the colonies.⁽³⁾ Again, the intentions of the

1 Helen T. Manning *The Revolt of French Canada, 1800-35. A Chapter in the history of the British Commonwealth*, London 1962, 169.

2 P.D. 2nd ser., XIX, 31ⁿ.

3 *Ibid*, 2nd ser., XIX, 318-31. See, on these debates, Manning *op.cit.*, 248-53, and for a much more detailed discussion of Mackintosh's interest in the problems of French Canada, Neat 'The Parliamentary Career of Sir James Mackintosh', 116-122. Mackintosh was appointed to the committee of inquiry into the government of Canada; but Huskisson was able to ridicule his rhetoric on a later occasion by pointing out that he had not once attended to speak for the Canadians. P.D. 2nd ser., XIX, 1439. On the other hand, for the historian of the French Canadians, he was 'one of the two best friends the Canadians ever had in the House', Manning *op.cit.*, 166.

government were frustrated.

This principle was tested again when the government of India came before the House. Though, Mackintosh admitted, India was the best governed of all absolutist states, due to the watch kept on it by public opinion and by Parliament, there were inescapable disadvantages to such a government, one of which was the exclusion of natives from office. He presented a petition from natives to be allowed to sit on Grand Juries in India.⁽¹⁾ He supported their claims again in 1830; he dismissed the theory of the natural inferiority of certain races as a mere rationalisation of oppression. His own observation and experience had taught him that no race was used with more unnecessary harshness than the half-castes, against whom all laws seemed directed. Harmony in India would be promoted by nothing so much as by the abolition of all distinctions, political and civil, between races and castes.⁽²⁾

Yet the most urgent and necessary political issue with which Mackintosh was concerned was that of the reform of the constitution in Britain; it was apparent to the Whigs that they had no hope of emerging from the slough of opposition until they produced a credible programme for reform. Although Mackintosh had been luke warm in opposing the government's repressive postwar measures, he had regretted, in 1817 that the party was not ready to pronounce more definitely in favour of reform. Between 1817 and 1820, it seemed that repression had failed, and had indeed aggravated the temper of the nation.⁽³⁾ Moreover, Mackintosh had found a suitably Whiggish ally in Lord John

1 P.D., 2nd ser., XXI, 1755-6.

2 Ibid, 2nd ser., XXIII, 383-5.

3 Entry in journal, 23 January 1817. B.M.Add. MSS 52442; Edinburgh Review, XXXIV, November 1820, 165-203.

Russell.⁽¹⁾ In two articles in the Edinburgh Review, in 1818 and 1820, Mackintosh laid down the Whig creed of reform; in these, what was recognised as the official manifesto of the Whigs was set out, exciting Benthamite wrath.⁽²⁾ The articles are generally seen as the clearest exposition of Old Whig theory.⁽³⁾

In December 1818, Mackintosh reviewed Jeremy Bentham's Plan of Parliamentary Reform, in which the 'theory of natural rights became absorbed in the theory of general utility', and Bentham pronounced himself for virtually universal suffrage.⁽⁴⁾ Mackintosh used Bentham's Plan to point the difference with his own party, which opposed both universal suffrage and the ballot, and based their own plan of parliamentary reform on coherently reconstructed Whig principles, which owed nothing to natural rights, in the popular sense, or to the principle of utility, in the Benthamite sense. The criterion was not to be that of individual right, but individual liberty; and universal suffrage could not possibly conduce to the greater liberties of the people. To raise the subject would be to raise terrible dissensions between the higher and lower classes, and security would finally be sought in absolute government; such a debate could lead only to despotism or democracy. Besides the fact that a uniformity of franchise ran counter to all the principles of English representation, universal suffrage could only mean the tyranny of majority rule, in

1 Mackintosh to Russell, 14 October 1819. Early Correspondence of Lord John Russell, 205.

2 Mill to Ricardo, 18 December 1820. Ricardo Works ed. Sraffa VII, 328.

3 H.J. Hanham The Nineteenth Century Constitution, 3; J.R. Pole Political Representation in England and the Origins of the American Republic, 484-6.

4 J. Bentham Plan of Parliamentary Reform, in the form of a catechism with reasons for each article, with an introduction, showing the necessity of radical and the inadequacy of moderate reform, London 1817; see E. Halevy The Growth of Philosophic Radicalism, 415-7.

which one class would naturally domineer over all others. This situation could be paralleled in Ireland, where the choice appeared to be between a Catholic majority and a Protestant minority; wherever the labouring classes were in a majority the same problem applied. Moreover, universal suffrage ignored other diversities which were essential to the nation: especially that between the political activity of the towns and the conservatism of the countryside, where the ascendancy of the freeholders was an essential stabilising force in the constitution.

Equally the ballot could be of no real service. It could not ensure secrecy; the way in which votes were cast was bound to emerge in the course of discussions and public meetings. And it was unlikely, when every possible inducement of personal advantage was taken away from the exercise of the vote, that public spirit would triumph over apathy. Lethargy and indifference towards this public duty would soon set in. But, even more important, the ballot would do away with the public ritual of the hustings, and in so doing demolish a structure carefully erected to nurture public spirit, the sense of duty, well-doing and participation within the community. It was this, not the function of choice, which was the primary purpose of an election:

They are fitted to produce that democratic spirit, which, tempered in its progress through the ~~various~~ numerous classes of the community, becomes the vital principle of life. (1)

The answer to the problem of a legislature which was, without doubt, seriously out of harmony with public opinion, was a system in which classes and interests, not individuals, were represented. The nation should be considered as divided into classes, according to either local or professional interests:

1 Edinburgh Review, XXXI, 197.

Each of these classes must be represented by persons who will guard its peculiar interest, whether that interest arises from inhabiting the same district, or pursuing the same occupation, - such as traffic or husbandry, or the useful or ornamental arts... The representative assembly must therefore contain, - some members peculiarly qualified for discussion of the constitution and the laws, others for those of foreign policy; - some for the respective interests of Agriculture, Commerce and Manufactures; some for military affairs by sea and land, and some also who are conversant with the colonies and distant possessions of a great Empire. (1)

Such an assembly was justified by historical precedent. The first meeting of the Commons had been marked by a very apparent respect for the distinct and separate interests of the knights of the shire and the representatives of the boroughs. In the ancient grants of charters, care was always taken to ensure the representation of different interests; nowhere was there any mention of a representation based on population. Under Elizabeth and under James, these regular grants had been made in order to preserve harmony between the community and its representation. Two principles could be drawn from the history of parliament, the separate representation of interests, and parallel with this, the virtual representation of those nominally excluded from the suffrage. The franchise had not been granted to all men, but to the freeholders of the counties and the freemen of the towns, who adequately represented their fellows. (2)

Clearly Mackintosh's description of the role of the delegates to the legislature could lead one to assume that the representative carried an imperative mandate from his constituents, to defend at all costs his own interest; this is the assumption that Mackintosh's opponents made. Yet such a principle of representation was combined

1 Ibid, XXXI, 175.

2 Ibid, XXXIV, 469-80.

with the parliamentarism so typical of Old Whig theory. Parliament was not a 'congress of warring interests' but one from which the public voice would emerge by the exchange of views and the deliberation of men of goodwill and rational judgment. This was why a preponderancy of landowners was so necessary to the Commons; they alone could give it that stable core which could view questions without being overly influenced by personal advantage. Parliament represented the nation not through the proportionate representation of population or through an acceptance of the rule of the majority, but by the miraculous transmission of the voice of the whole people, including majorities and minorities alike.⁽¹⁾

The first function of parliament was naturally the making of good laws; for this, a large body of landowning men, with property, independence, and leisure - and, therefore, it was assumed, moderate and balanced judgment - was essential. The nation was fortunate if power was bestowed on those who already enjoyed a natural ascendancy:

Where law and nature coincide, government is most secure;
and the people may be most free. (2)

An assembly had also to be sufficiently strong to resist oppression; and here the democratic element of the legislature came into its own. Those who represented the lower classes would champion popular rights against repression. The task of government was, also to spread the spirit of freedom abroad; and the elective process should work by diffusing this spirit of freedom among all classes. The nobility, who, in their ordinary lives, suffered no restraints, were

1 See on this, Samuel H. Beer Modern British Politics. A Study of Parties and Pressure Groups, London, Paperback edition 1969, 15-19; Pole op.cit., 494-9.

2 Edinburgh Review, XXXI, 177.

made to realise their dependence on popular favour; among the lower classes, its moral effect was invaluable:

The important object is, that they should contemplate extensive consequences as capable of arising from their own actions, and thus gradually become conscious of the moral dignity of their nature. Among the very lowest classes, where the disorders of ~~the~~ election are the most offensive, the moral importance of the elective franchise is, in some respects, the greatest. (1)

The function of the representative system was, therefore, above all to preserve the value of liberty, to ensure its diffusion, and to combat any assaults on it tending in the direction of despotism, or democracy.

Only if this view of the representative system is recognised can the basic difference between Mackintosh and his utilitarian critics be established. Mackintosh's arguments inspired further development of Bentham's premises by his disciples. James Mill's Essay on Government 'should be taken as the answer of the Benthamites to the objections of Mackintosh'. (2) George Grote's Statement of the Question of Parliamentary Reform reviewed Mackintosh's arguments in great detail. (3) Their discussion coalesced around the central utilitarian argument: that the individual would naturally follow his own self-interest, and that the purpose of reform of the representative system was to minimise the 'sinister interest' of the government. Structurally

1 Ibid, XXXI, 180.

2 E. Halévy Growth of Philosophic Radicalism, 419. See also 'The Articles in the Edinburgh Review relating to Parliamentary Reform', Westminster Review, IV, 1825, 194-233. This is identified as by James Mill in W. Thomas, 'James Mill's Politics: the 'Essay on Government' and the Movement for Reform', Historical Journal XII, 1969, 249-284.

3 (G. Grote) Statement of the Question of Parliamentary Reform with a reply to the objections of the Edinburgh Review, No. LXI, London 1821.

this purpose had much in common with that of the Whigs, concerned to protect the liberties of the people against the executive; but, as the utilitarians had a very different idea of political motivation, so had they of the solution to the problem. Mill and Grote directed their work towards undermining Mackintosh's assumptions. First, it was inconceivable to them that a different ministry, the Whig ministry, premised by Mackintosh, could act against its own, essentially aristocratic interests. Secondly, they did not accept the restraining role of public opinion in government. It had not succeeded in moderating the activities of government up till then, nor, even at best, could it exert anything but a negative force. Thirdly, the theory of class representation was attacked as being the very antithesis of the radical creed, combining the 'sinister interests' of every section of the population. What would, in effect, happen under this system was a combination of separate interests to form a majority, to the exclusion of others. The only escape was to represent that fraction of the individual's interest which coincided with the community's interest:

The Reviewer, therefore, is surely incorrect in describing the general interest as composed of different local and professional interests; for the very reverse is the fact - the general interest forming a minute component part of every local or professional interest. (1)

Mill similarly attacked this theory as likely to produce merely 'a motley aristocracy':

We are under the necessity of believing that an *esprit de corps* would be formed in the classes separated from the rest of the community for the purposes of representation; that they would pursue their common interest and inflict all the evils upon the rest of the community to which the pursuit of that interest would lead (2)

1 Grote Statement of Parliamentary Reform, 51.

2 James Mill Essay on Government, Bobbs-Merrill edition, 1955, 81.

The only way to circumvent the self-interest of the governing classes was a virtually universal suffrage, the secret ballot and annual elections. Grote and Mill were able to destroy Mackintosh's feeble defence of open voting; it was not difficult to ridicule the vision of parliamentary elections inculcating public spirit among the lower classes. Only with a representation based on universal suffrage, in which there would be an identity of interest between governors and governed, would there be any chance of evading the 'sinister interest' of the governors. The poor were not necessarily the sworn enemies of property, as Mackintosh had assumed; they were fully capable of respecting the rights and property of the minority. Yet, as Mill said:

The whole of this chain of reasoning is dependent, as we stated at the beginning, upon the principle that the acts of men will be conformable to their interests (1)

Mackintosh was acting on quite different assumptions: that men were capable of acting rationally and impartially, and that from an assembly of the most important interests within the nation, the voice of reason, of common sense, of justice, would in the last resort emerge.

In 1820, besides clarifying the principles of his earlier article, Mackintosh also reviewed a specific programme of reform, a speech made by Lord John Russell during the debates on the disfranchisement of Grampound in 1819.⁽²⁾ Mackintosh himself spoke briefly in these debates.⁽³⁾ The case for disfranchisement was fully proved; the issue was the transfer of the seat. Russell's programme was a moderate

1 Ibid, 84.

2 Speech of Lord John Russell on 14 December 1819 for transferring The Elective Franchise from Corrupt Boroughs to Unrepresented Great Towns, London 1820.

3 P.D. XXXIX, 912-4, XL, 283.

one. It included the immediate addition of twenty members to the representation, to be chosen from the wealthiest communities of Britain, in accordance with the principles of the representation of interests. Disfranchisement was to be limited, for the time being, to boroughs proved guilty of corruption; the pocket and decaying boroughs were to be spared. Mackintosh took up, and examined, the possibilities of this scheme. In Scotland a radical approach was needed, to give the vote to all freeholders, and freemen of a certain status. The great expense of elections would have to be reduced, though he does not specify in what way. Only when this was achieved could the question of the duration of parliaments be reconsidered. Any deviation from the constitution had to be justified by the greatest necessity, as was the Septennial Act; yet the extent of ministerial influence employed in elections could justify a shortening of parliaments. Mackintosh could still argue that 'the English representation was actually founded on the first principles of political theory'; its inadequacies could be remedied by the revival of true constitutional principles.⁽¹⁾

Mackintosh's approach by now echoed the demands of the leaders of his party; in 1822 Russell went further in advocating the immediate addition of one hundred new seats. The principle of the transfer of seats had been accepted when the seats from Grampound had been allotted to Yorkshire. Yet for the next few years the cause was allowed to lapse, and though Russell again presented a programme to the House in 1825, Mackintosh did not intervene again until 1828, on the debates on the disfranchisement of East Retford and Penryn. There he gave his version of the case for redistribution:

1 Edinburgh Review, XXXIV, 461-501.

The view of Cornwall on the one hand, and^{of} Nottinghamshire on the other, must have a tendency very much to disturb those who are friends to the system of averages. If, however, we must have averages, at least let them not be numerical; let them be founded on a comparison of property and interests. Then indeed the difference between forty-two members for Cornwall and four from Rutland would appear extreme. (1)

To grant a seat to a large manufacturing town would be less of a precedent, historically, than to give it to a county; the landed interest had already had the benefit of three disfranchised boroughs. It was time that the unrepresented people of Birmingham, rather than the freeholders of the local hundreds, were granted their right to representation. (2)

In July 1831, in his only major speech during the reform bill debates, Mackintosh did not diverge from his earlier manifesto. He rehearsed the historical precedents for revising the representation so that it adequately reflected the state of the nation; they had 150 years of arrears with which to deal. And in this they were following a precedent set by Pitt himself, in his bill of 1785. The obvious evils that appeared during parliamentary elections were merely outward manifestations of an internal deeply-rooted evil: the legislature had lost contact with the people. The evils of nomination boroughs could be exaggerated; he paid tribute to his own patron. Yet to regard a seat as property, as the opposition were arguing, was a very dangerous and unwarranted assumption; it would alienate the disfranchised permanently. The vote itself, and the influence that a proprietor enjoyed should be regarded as

1 P.D. 2nd ser., XVIII, 1287-8.

2 Ibid, XVIII, 1284-9.

a trust, for which the holder was responsible. The young men of talent for whom nomination boroughs seemed so necessary would find, he was sure, their own way into the Commons. The sale of seats should be seen as an evil as great as the sale of offices, for so long condemned. He was, however, far from condemning the influence of the great proprietors; yet the natural influence of property and wealth, if exercised beneficially, was so great that it would hardly be touched. Yet for the landlords to show hostility towards the people would be fatal, and could destroy that influence:

At this moment, when, amidst many causes of discord, there is a general sympathy in favour of reformation, the superior classes of society, by opening their arms to receive the people - by giving to the people a signal and conspicuous proof of confidence - by putting trust in the people, may reasonably expect to be trusted by the majority of their countrymen. (1)

The measure would go a very long way towards calming the spirits of the people; the alternative was coercion. Reform, in itself, would preserve the fundamental laws of the constitution.⁽²⁾ Mackintosh did not speak again for the English bill, though he was interested in the progress of Scottish reform.⁽³⁾ His speech illustrates the way in which the Old Whig theory of representation still provided a doctrinal basis, beyond which Brougham and Macaulay were to advance, for Whig reform. Mackintosh's insistence on a diversity in representation, on the enfranchisement of communities, justifying that even of the wealthiest by the interest they represented, lends itself also to a

1 P.D. 3rd ser., IV, 690.

2 Ibid, 3rd ser., IV, 669-99.

3 Ibid, 3rd ser., III, 1362, VII, 559-64, 1254-5.

recent interpretation of the 'sociological premises of the first Reform Act.⁽¹⁾

But Mackintosh's participation in the reform crisis was limited to this alone; his political stock had long since fallen, and he held a very minor post in Lord Grey's government. He had had hopes, in 1827, of joining Canning's administration, since he was by then definitely recognised as a follower of Lansdowne's wing of the Whig party. But his failure to attend the House regularly, his health and the competition from more vigorous politicians prevented Lansdowne from backing him for any high office.⁽²⁾ Negotiations were in progress however, to obtain him a seat at the India Board; in expectation of this he was made a Privy Councillor.⁽³⁾ The fall of Goderich's government ended his hopes. By 1830 Grey, to Mackintosh's bitter disappointment, could only offer him, again, a seat at the Board of Control - a bone tossed to an 'old Scotch Foxite'.⁽⁴⁾

1 D.C. Moore 'Concession or cure: the sociological premises of the first Reform Act', Historical Journal, IX, 1966, 39-59.

2 A. Aspinall The Formation of Canning's Ministry, February to August 1827. Camden Third Series, LIX, London 1927, 180, 194, 202, 220. Mackintosh also appealed to Canning personally, asking for a diplomatic appointment. Mackintosh to Canning, 8 May 1827. Box 93, Canning papers. Leeds Central Library.

3 Lansdowne to Lord Abinger, 14 December 1835, B.M.Add. MSS 52453; W.D. Jones 'Prosperity Robinson'. The Life of Viscount Goderich, 1782-1859, London 1967, 166; L. Melville (ed.) The Huskisson Papers, London, 1931, 238; for a full discussion of the negotiations, see Neat 'Parliamentary Career of Sir James Mackintosh', 159-66.

4 Ibid, 184-8; Grey to Mackintosh 25 November 1830, and Holland to Mackintosh n.d. B.M.Add. MSS 52453; Holland to Brougham, 31 January 1831. Life and Times of Henry Lord Brougham, III, 453; A. Aspinall 'The Last of the Canningites', English Historical Review, L, 1935, 663, n.2.

IX THE MAKING OF WHIG HISTORY

In 1808, Francis Jeffrey reviewed Fox's History of the early part of the reign of James II; his criticism went to the heart of Whig historical writing.⁽¹⁾ He praised Fox's devotion to the principles of liberty, and his 'temperate and practical patriotism'. Yet the work was limited both in conception and execution:

We allude, to those general views of the causes which influence the character and disposition of the people at large; and which, as they vary from age to age, bring a greater or a smaller part of the nation into contact with its government, and ultimately produce the success or failure of every scheme of tyranny or freedom. (2)

Analysis of the development of a nation, of the character of a political civilisation, was entirely lacking; narrative, however exciting, could never replace 'philosophical' insight. Mackintosh, on reading the review, expressed politic disagreement with Jeffrey's strictures on Fox's style; but, fundamentally, he agreed with the dissection. And he was aware that his own talents lay in the opposite direction, in 'speculative' history.⁽³⁾ He cast himself in the role of Fox's successor; but examination of Mackintosh's fragmentary historical writings does reveal these two, sometimes conflicting, tendencies. As a 'philosophical' historian, he wished to study the growth and formation of a nation, and the spirit and manners of its civilisation; as a Whig, his history reflected the current interpretation of political liberty.

1 F. Jeffrey 'Fox's History of James II', Edinburgh Review, XII, July 1808, 271-306. For Fox's work, see J.R. Dinwiddy, 'Charles James Fox as Historian', Historical Journal, XII, 1969, 23-34.

2 Edinburgh Review, XII, 283.

3 Mackintosh to Richard Sharpe, 20 January and 9 April, 1809. B.M.Add. MSS 52452.

In March 1808, Mackintosh had recorded in his journal:

In the evening began Smollett's Continuation (of Hume) to the children.- Revived my old ambition of writing the History of England since the Revolution.- A life of projects! (1)

In the following years he read very widely among English historians; three years later, in March 1811, he had conceived the plan of the major historical work which was to occupy him for the rest of his life. A history of England from 1688 to 1789 would, he hoped, refute and correct the work of earlier historians, Whig and Tory. As he read the continuation by Tindal of the History of England by the Huguenot, Rapin-Thoyras, he determined that an entirely new view of William III would be central to this reinterpretation of English history. (2)

My project is the History of Great Britain from the English Revolution in 1688 to the French Revolution in 1789 - I hope that it may be contained in three quartos. The first from the Revolution to the Accession - It is a very great subject the Establishment of a free government in England completed by the Accession, and ^{the} security of the liberties of Europe, imperfectly obtained by the Peace of Utrecht - When the character of King William is delivered from misconception & that of Lord Somers displayed in its proper lustre these noble objects will appear to be pursued by Councils at home & glorious undertakings abroad with disappointment & vicissitudes enough to exercise & prove the fortitude of the great Statesmen and Captains who are the heroes of this action. The second Vol. will extend from the Accession to the Treaty of Paris in 1763 & will represent the quiet and prosperous administration of that free Government closing with the brilliant war of Lord Chatham & clouded just at the end by a second peace of Utrecht. The third is a struggle between the principles of all established authority & the rising Spirit of the Age - terminated by all the preparations for the tremendous contest which occupied the next twenty years. (3)

1 Memoirs, I, 395.

2 P. de Rapin-Thoyras The History of England. Translated...with additional notes (and a continuation to the accession of George II) by Nicholas Tindal. 28 vols., London 1726-47; Memoirs, II, 88.

3 Mackintosh to Whishaw, 13 August 1811. B.M.Add. MSS 52452; see also Memoirs, II, 154-8.

It is clear that the original inspiration was for a history which would relate the English role in the European struggle against despotism; the whole age was marked out by the struggle, on the European stage, between the advance of knowledge and the arbitrary powers of despotism.

Mackintosh went on to outline the qualifications which he possessed for such a work:

I may write a book which may serve for a time as the popular history & after it ceases to be read by the Public may be useful to the Historian - I have some advantages of a secondary kind. My understanding has been chiefly employed in speculating on history. The Govt. & general laws of England have been my peculiar study for twenty years. All the studies of my life have been preparations for such a work - All the fragments of my undertakings will be materials for it. An historian ought to mix active life with business - I have seen Colonial Establishments and the manners of Nations the most dissimilar to those of Europe - My curiosity has been a little directed to the theory of Land & Sea War. I have reflected on Commerce & Revenue - I at least know enough of these subjects to abridge what the masters of each Art have taught in such a manner as to be intelligible to the general reader & more would be misplaced in History - I may apply the same observation to criticism on works of science & Literature of which the appearance is in reality an historical event when they affect general opinion & conduct or even characterise general sentiment & display the condition of a People - I know a little of the manner in which foreigners regard English transactions & I can avail myself of those materials of European history which are ~~maintained~~ in the principal languages of Europe & which have been unknown or neglected by former English ~~writers~~. These are some of my substitutes for Historical Genius. (1)

Clearly this history was not to exhibit the bare constitutional bones of 1688. Nor would it rely, as Fox had done, simply on the skill and style of the narrative.

1 Mackintosh to Whishaw, 13 August, 1811. B.M.Add. MSS 52452.

For Mackintosh, history was the record of the progress of man's intelligence, dominated by the conflict between the advancing strength of reason and liberty, and the powerful forces of despotism. The political state of a nation was essentially related to the spirit, the manners, religion, and institutions, of a people. Much of this was conventional Voltaireanism;⁽¹⁾ but it should be noted, firstly that Mackintosh defined the condition of a society by reference to its political state, and, secondly, that in spite of his emphasis on the European context, he projected the history of a national community. Dugald Stewart's definition of 'theoretical or conjectural history' is well known:

In examining the history of mankind, as well as in examining the phenomena of the material world, when we cannot trace the process by which an event has been produced, it is often of importance to be able to show how it may have been produced/ ⁽²⁾
by natural causes.

For Mackintosh the study of the clash between liberty and despotism provided material for analyses of related political phenomena. In 1816 he criticised Stewart for not grasping the merits of Machiavelli's Discourses 'the first attempts in a new science - the philosophy of history'. Machiavelli had conducted an inductive and scientific investigation into the nature of tyrannical power, constructing a new theory of a class of political institutions.⁽³⁾ Scientific analysis was needed of the interplay between the spirit of a people, and their political arrangements. And this was what Jeffrey had specifically demanded:

1 J.B. Black The Art of History. A Study of four great historians of the eighteenth century, New York, 1926, 22-75.

2 Stewart Works, X, 34.

3 'Stewart's Introduction to the Encyclopaedia', Edinburgh Review, XXVII, September 1816, 217-9.

all permanent and important occurrences in the internal history of a country are the result of those changes in the general character of its population; and ~~that~~ kings and ministers are necessarily guided in their projects by a feeling of the tendencies of this varying character, and fail or succeed exactly as they had judged correctly or erroneously of its condition. To trace the causes and modes of its variations is, therefore, to describe the true sources of events. (1)

Jeffrey called for, in effect, a science of political behaviour. He asked why Fox had not explained the complexity of the circumstances that determined the joy of the nation at the restoration of Charles II, its submission to his tyranny, and the national movement towards the revolution of 1688.⁽²⁾ This was the kind of history which Mackintosh hoped to write. Such an investigation would educate his readers to an appreciation of rational and temperate liberty and to recognition of the arts of tyrannical policy.

Such a history was, of course, never written. The field for work on seventeenth century history was certainly open; a vastly increased number of published sources made reinterpretation both possible and desirable. Sir John Dalrymple, and James Macpherson, inspired by Robertson, had begun the combing of English and French archives, though in the Tory interest.⁽³⁾ Yet the extent of the research on which Mackintosh embarked was, literally, unprecedented; no other historian had undertaken such wide and fruitful research in government and private archives. Even before he returned to England, Mackintosh had prepared a list of the private papers to which he wished to gain access.⁽⁴⁾

1 Jeffrey 'Fox's History of James II,' Edinburgh Review, XII, 283-4.

2 On Jeffrey's historical ideas, see Clive, Scotch Reviewers, Ch. 7.

3 C.H. Firth 'The Development of the Study of Seventeenth Century History', Transactions of the Royal Historical Society, 3rd series, VII, 1913, 25-48; D.B. Horn 'Some Scottish Writers of History in the Eighteenth Century', Scottish Historical Review, XL, 1961, 1-19; T.P. Peardon, The Transition in English Historical Writing, 1760-1830, New York, 1933, 69-103.

4 Entry in journal, 6 March 1812. B.M.Add. MSS 52440.

Initially he was not altogether successful in his applications, meeting with some suspicion from owners.⁽¹⁾

A year or so later, however, he scored his greatest coup: admission to the archives in Paris, in 1814. He hoped to go beyond the researches of Dalrymple and Fox in the Archives des Affaires Étrangères, and examine all despatches there relevant to English history between 1688 and 1789. Mme de Stael had promised him that Talleyrand, as foreign minister, would allow him full access;⁽²⁾ and on Mackintosh's arrival in Paris, Talleyrand did give orders that he was to be allowed to see anything that he wished.⁽³⁾ Mackintosh installed himself with his copyists, from 19 October 1814; on that day he recorded:

At this moment the underkeeper of the Archives has placed in the shelves of my little room for my use Thirty Eight volumes folio of Correspondence respecting England and Holland from 1689 to 1698 - what a tremendous mass. ⁽⁴⁾

He made extracts from despatches dating from 1660 onwards, including unpublished letters from Barillon and D'Avaux, French ambassadors to England and Holland during the reign of James II.⁽⁵⁾ However, he was rather more excited by the details of a Tory conspiracy in the last years of Queen Anne; the negotiations between the Tories and France between 1710 and 1714 were 'the great object of my enquiries'.⁽⁶⁾ He believed that his material conclusively established the existence of such a conspiracy.⁽⁷⁾ But he was frustrated in his attempts to

1 Mackintosh to Lord Grey, 10 June 1813. Grey papers.

2 Mackintosh to Lady Holland, July 1814, B.M.Add MSS 51654

3 Entry in journal, 27 August 1814. B.M.Add. MSS 52441.

4 B.M. Add. MSS 34500 f. 1.

5 The extracts made at Paris are in the British Museum, Add. MSS 34488-34503.

6 B.M. Add. MSS 34500 f.3.

7 Mackintosh to Lord Holland, 6 February 1815. B.M.Add. MSS 51653.

work beyond the mid-eighteenth century. The Comte d'Hauterive, official head of the archives of the foreign ministry, was warned of the invasion of his territory by Mackintosh and his army of copyists. According to his biographer, he leapt into a carriage, drove from his family home into Paris, erupted into the Dépôt des Affaires Étrangères, ordered all research to cease, and confiscated all Mackintosh's extracts:⁽¹⁾

Sa bile ~~est~~ allumée et la bile d'Hauterive ^{allumée} est une incendie. (2)

Mackintosh's politics were obnoxious, and his project unacceptable to d'Hauterive, who feared the disclosure of the secrets of French diplomacy to the English, already sufficiently unpopular in Paris. Talleyrand was in Vienna; but the Duke of Wellington was invoked, and interviewed d'Hauterive on Mackintosh's behalf. A compromise was reached.

Mackintosh was allowed to view documents up to 1744; his extracts were returned to him, but in future he alone, without his clerks, was to be admitted to work in the archives of the foreign ministry.⁽³⁾

In the Archives Générales of France, Mackintosh was able to study the papers of the nuns of Chaillot, on the last years of James II and Mary of Modena in France.⁽⁴⁾ But beyond the predictable French sources, there were also the archives of Rome, Vienna, and Simancas, transported by order of Napoleon to form the basis of the new imperial archives.⁽⁵⁾

1 Artaud de Montor Histoire de la vie et des travaux politiques du Comte d'Hauterive... Paris, 1839, 381-92.

2 De Jaucourt to Talleyrand, 22 November 1814. Correspondance du Comte de Jaucourt, ministre intérimaire des affaires étrangères avec le prince de Talleyrand pendant le congrès de Vienne. Publiée par son petit-fils... Paris 1905, 94-5.

3 Montor Histoire de la vie... du comte d'Hauterive, 387-90; B.M. Add. MSS 52441 passim for a detailed account of this drama.

4 The extracts are in B.M. Add. MSS 34501; part of this material had already been published in English. See The Memoirs of King James II... containing an account of the transactions of the last twelve years of his life: with the circumstances of his death. Translated from the French original, London 1702.

5 L. de Laborde Les archives de la France, leurs vicissitudes pendant la révolution, leur régénération sous l'Empire, Paris 1867, 179ff.

The man who supervised their removal, Daunou, still acted as their custodian; Daunou was a friend of Destutt de Tracy and de Gérando. He moved in liberal circles, and had himself plundered the papal archives for anti-clerical material. Although the Papacy already expected the return of its archives, Daunou allowed Mackintosh to see what he wished.⁽¹⁾ Mackintosh wrote to Allen:

If I had been at Paris two years ago when there was free access to this collection, I might have made very great use of it - But my visits were only in the evening & on Sundays when I could be unobserved - The place of the archivist depended on secrecy. (2)

Even under these conditions, he made copies of the letters from Cardinal D'Adda, Papal Nuncio in England from 1685 to 1689, and of letters from James II and Mary of Modena to Cardinal Ottoboni.⁽³⁾ He was able also to make use of the despatches of Don Pedro Ronquillo, Spanish ambassador in England from 1685 to 1689, from the archives at Simancas, some years before Lingard obtained access.⁽⁴⁾

Mackintosh was also extremely interested in the material available in Holland. Through the intervention of Lord Holland with A.R. Falck, one of the leaders of the Dutch rising against Napoleon, and secretary of state to the Prince of Orange, transcripts were made available to him of King William's correspondence with the Pensionary Heinsius; these papers were still at that time in private hands.⁽⁵⁾ Much

1 On Daunou, see C. Walckenaer Notice historique sur la vie et les ouvrages de M. Daunou, Paris, 1841; L.P. Gachard Les Archives du Vatican, Bruxelles 1874, 20-40; Laborde, Les archives de la France, 179-205.

2 Mackintosh to John Allen, 6 February 1815. B.M.Add. MSS 52182.

3 The extracts are in B.M.Add. MSS 34502-3.

4 Mackintosh to John Allen, 6 February 1815. The extracts are in B.M.Add. MSS 34502. For the difficulties of obtaining access to the Simancas archives, see E. Jones 'John Lingard and the Simancas archives' Historical Journal, X, 1967, 57-76.

5 Mackintosh to John Allen, 21 July 1814, and 9 June 1815. B.M.Add. MSS 52182; the extracts are in B.M.Add. MSS 34504-6, with English translations.

later, during a visit to Holland in 1824, he himself worked at the archives in The Hague, studying the despatches of the Dutch ambassador in England from 1685 to 1688.⁽¹⁾

The research done by Mackintosh in foreign archives provided:

almost a complete collection of the materials necessary for writing the history of James II's reign, so far as they were supplied by the foreign archives accessible at that time. (2)

His use of public and private material in England was as extensive.

He obtained permission from the Prince Regent to examine the recently acquired Stuart papers, and any State Papers he might require.⁽³⁾

At that time obstacles to historical research were still considerable; keepers still relied on the fees paid by researchers, without providing facilities for their work. In 1817, Mackintosh wrote of the State Paper Office:

it is shabby and confined with only one room for a Person to take extracts in, now occupied by Coxe. (4)

However, he found Robert Lemon, the Deputy Keeper there, prompt and helpful in replying to his enquiries, and in extracting detailed information from the records.⁽⁵⁾ In the State Paper Office, Mackintosh read the correspondence of Lord Sunderland with Jeffreys, and Colonel Kirke, and other material on the army, and on the suppression of Monmouth's rebellion.⁽⁶⁾ William Lynch, the Irish historian, tried

1 Entry in journal, 17 August 1824. B.M.Add. MSS 52446; the extracts and translations made there filled six volumes. B.M.Add. MSS 34507-34512.

2 C. Firth A Commentary on Macaulay's History of England, 2nd impression, London, 1964, 59.

3 Mackintosh to Colonel MacMahon, 8 January 1813, Rev. J.S. Clarke to the Prince Regent (1813), Mackintosh to Colonel MacMahon, 6 March 1813, Aspinall (ed.) The Letters of King George IV, I, Nos. 212-3, 249. The Prince Regent's chaplain, and editor of the Stuart papers, the Rev. J.S. Clarke, objected to permission being granted, on the grounds of Mackintosh's political principles.

4 Entry in journal, 3 May 1817, B.M.Add. MSS 52442.

5 See the letters from Lemon in B.M.Add. MSS 34516, and 34526 passim.

6 The extracts are now in B.M.Add. MSS 34516 and 34526.

unsuccessfully to gain access to material in the Dublin State Paper office for Mackintosh.⁽¹⁾

Mackintosh embarked also on a programme of systematic research through the collections of private owners. In each case he approached the owner, often through an intermediary, asking for permission either to copy extracts from manuscripts at the owner's house, or to borrow the papers. In thanking Lord Auckland for obtaining for him permission to consult the Duke of Marlborough's papers, he set out his principles on this:

It is my wish to show my extracts to the person who permits me to examine his papers, or to someone in whom he confides, that I may publish nothing which he would not himself have published...

In the case of those facts which are properly historical, I should certainly do my best to persuade the owners of papers not to be too scrupulous. I should, as a general maxim, suppose that what is merely political cannot, at the distance of a century be supposed to require any concealment.

But in every case I should think myself bound to comply with the desire of the owner in the use to be made of the papers..⁽²⁾

The Portland papers, containing the correspondence between William III and Bentinck, were among his most important sources;⁽³⁾ but besides these he consulted a wide range of private collections.⁽⁴⁾

1 William Lynch to Mackintosh, 6 July, 1 and 12 August, 23 and 10 October 1827. B.M.Add. MSS 52453.

2 Mackintosh to Lord Auckland, 5 August 1813, Journals and Correspondence of William Lord Auckland, IV, 392-3.

3 See the correspondence between Mackintosh and the Duke of Portland. Portland papers Pw H 890-4. University of Nottingham. The extracts are in B.M.Add. MSS 34514-5.

4 Among others, Mackintosh consulted the Legge Papers, the Essex Papers, the papers of Richard Graham, Viscount Preston, the papers of the Duchess of Buccleugh, the Melville Papers, the Somers Papers, the Hardwicke Papers, the Lauderdale Papers, the Queensberry Papers, the Trumbull Papers, and all the manuscripts relevant to his work at Holland House and Bowood. For extracts from these collections, see B.M.Add. MSS 34513, 34517, 34519-20, 34523-6; there is also much correspondence relevant to Mackintosh's researches in B.M.Add. MSS 52452-3.

In the printed sources, of course, he browsed very deeply indeed; he was able to borrow rare books and newspapers from Richard Heber, one of the richest bibliophiles in the country.⁽¹⁾ Mackintosh corresponded with other historians, lawyers, and antiquaries;⁽²⁾ and he was given some assistance by local historians.⁽³⁾ He wrote to his friends abroad for relevant material, and corresponded with Guizot about seventeenth century history.⁽⁴⁾ Mackintosh's closest confidant was probably John Allen of Holland House; the two read and criticised each other's works.⁽⁵⁾

Mackintosh's extensive researches had a significant side-effect; it is not always realised that he played an important part in the movement for the publication of government records. Together with John Allen, he proposed certain projects to the Commission on Public Records, to which he had been appointed in 1821.⁽⁶⁾ During 1818 and 1819, certain meetings took place to consider the publication of a 'National Collection of Materials for a History of Great Britain', on the model of the Recueil des Historiens des Gaules et de la France, of Dom Bouquet. Henry Petrie, a Keeper of the Tower, was invited to edit the work, and the government to consider its publication.

1 See Mackintosh's letters to Heber, and his lists of books required. Bodleian Library. MSS Eng.lett. d14 f.235-45.

2 See e.g. Malcolm Laing to Mackintosh 13 September 1813, and 14 December 1816, William Coxe to Mackintosh 27 September 1815, 23 September and 23 December 1816, B.M.Add MSS 52452; Mackintosh to Sir Henry Ellis n.d. B.M.Add. MSS 41312 f.301; Charles Butler to Lord Holland, 21 December 1821, B.M.Add. MSS 52453.

3 G.W. Meadley to Mackintosh 23 September 1817, B.M.Add. MSS 52453; James Savage to Mackintosh, 30 August 1823, B.M.Add. MSS 34516.

4 Mackintosh to A.W. Schlegel, 17 November 1823. Mscr Dresdenensis e90 XIX Bd 15 Nr 8; Mackintosh to John Allen January 1823. B.M.Add. MSS 52182; Guizot to Mackintosh, 8 February 1826, N.L.S. MSS 5319, f.202-3.

5 John Allen M.D. (1771-1843). Also started life as a medical student at Edinburgh. From 1805 he was secretary and librarian at Holland House; he wrote a number of historical articles in the Edinburgh Review. His best known work was his Inquiry into the Rise and Growth of the Royal Prerogative in England, London 1830, D.N.B.

6 See Peardon Transition in English Historical Writing, 284-310.

An outline was placed before the Record Commission in 1821; Mackintosh seconded a motion by Vansittart before the House.⁽¹⁾ The work proceeded until 1821; but because of the illness and death of Petrie, it was not published until 1848. The project was not continued because of its expense, until the plan of the Rolls series was devised in 1857.⁽²⁾

With Allen, Mackintosh also gave further impetus to the publication of parliamentary records. In 1821 he wrote to Allen:

I shall not be able without fuller instructions from you to represent to the Speaker all the advantages to be expected from a new edition of the Rolls of Parliament...I ought to be prepared for stating somewhat minutely the Errors & Defects of the present edition & the means which are now accessible of amending & enlarging if not completing it.

I must be ready to say where the MSS materials are to be found. (3)

His discussions with the Speaker were successful; and on being asked to name a candidate for the editorship, Mackintosh nominated a Mr. Cohen.⁽⁴⁾ In 1823, Cohen became Francis Palgrave, eventually an Anglo-Saxon scholar of some importance.⁽⁵⁾ Palgrave presented an outline plan for the publication of parliamentary material; in April 1822 he was appointed a Sub-Commissioner of the Public Records Commission to carry this out.⁽⁶⁾ Some work was done; but large sums of money

1 P.D. 2nd ser., VII, 1738.

2 T.D. Hardy, Introduction to H. Petrie and J. Sharpe Monumenta Historica Britannica or, Materials for the History of Britain from the earliest period. Vol. I only published. London 1848, 37-41.

3 Mackintosh to Allen, 10 April 1821, B.M.Add. MSS 52182.

4 Mackintosh to Allen (1 May - 13 July 1821) B.M.Add. MSS 52182.

5 On Palgrave's Scholarship see G.P. Gooch History and Historians in the Nineteenth Century. 2nd edition, London 1952, 267-71; R.H. Inglis Palgrave 'Memoir of Sir Francis Palgrave', in The Collected Historical Works of Sir Francis Palgrave. Edited by Sir R.H. Inglis Palgrave, 10 vols., Cambridge 1919, I.

6 F. Palgrave Remarks submitted to the Right Hon. Viscount Melbourne... in reply to a pamphlet addressed to him by Nicholas Harris Nicolas Esq., and entitled 'Observations on the State of Historical Literature..'. London, 1831, 40-1.

were expanded with no result. As Palgrave's project grew far beyond its original size, the work of the Commission was attacked, in particular by Sir Nicholas Harris Nicolas, a lawyer and antiquary.⁽¹⁾ The

Commissioners were divided; and Mackintosh, Allen, and the Speaker ^{Manners Sutton} (~~C.W. Wynn~~) stood indicted of jobbery, patronage and wanton expenditure.

An endless pamphlet war between Nicolas and Palgrave reviewed the merits of Palgrave's editing of the parliamentary writs, and its cost.⁽²⁾

A sub-committee of the Commission was set up in 1831 to consider Palgrave's work; but since it was composed entirely of his Whig friends, guided by Mackintosh from a distance, it merely gave substance to Nicolas' allegations.⁽³⁾ There was no doubt that the Committee had failed

to control expenditure adequately; on the other hand Palgrave had certainly done the most valuable work on the public records over these years.⁽⁴⁾ He survived later inquiries, and was made a Deputy Keeper

of the Public Records in 1838. Mackintosh, as one of the few active members of the Commission, had shown himself aware of the need for a new approach to the public records in England, on the lines of contemporary

1 Sir Nicholas Harris Nicolas (1799-1844). Antiquary; in 1826 tried to reform the Society of Antiquaries. A prolific writer on historical subjects. See D.N.B.

2 Sir N.H. Nicolas Observations on the State of Historical Literature, London 1830; idem Refutation of Mr Palgrave's 'Remarks in reply to Observations on the State of Historical Literature'... London 1831; C.P. Cooper (but actually written by Sir N.H. Nicolas) Observations on the Calendar of the Proceedings in Chancery edited by John Bayley Esq., F.R.S. & F.S.A. and on the Parliamentary Writs edited by Francis Palgrave Esq. F.R.S. & F.S.A.. Under the authority of The Record Commission... London, 1832; idem Remarks upon the 'Reply of Francis Palgrave Esq. to those portions of the statement drawn up by Mr C.P. Cooper which relate to the editor of the new edition of the Rolls of Parliament', London 1832; idem Papers relative to a complaint made by the editor of the new edition of the Rolls of Parliament. London 1832; Sir N.H. Nicolas A Letter to the Right Hon. Lord Brougham and Vaux, Lord High Chancellor on the constitution and proceedings of the present commission for Public Records, London 1832.

3 Record Commission (John Allen) Report of the Committee on the 'Report', 'Additional Statement', and 'Letter' of Mr Palgrave (May 1831), London 1832.

4 G.P. Gooch History and Historians in the Nineteenth Century, 2nd edition, London 1952, 268.

developments in France and Germany.

A continual involvement with the materials of history clearly informed Mackintosh's occasional historical writings; in his articles for the Edinburgh Review, between 1813 and 1826, he clarified his view of the role of the historian. Accuracy was a pre-requisite; the historian had to steep himself in contemporary sources before he could begin to recreate the atmosphere of the age. Yet it was important that the call for authenticity, for the publication and discovery of the original materials of history was directed to a purpose:

It is on the sympathy which History excites that its moral effect depends. The moral improvement to be derived from all narrative, whether it be historical or what is called fictitious, is in proportion to the degree in which it exercises and thereby strengthens the social feelings and moral principles of the reader. (1)

The more skilful and interesting the narrative, the greater its educative achievement; the picturesque narrative, recreated from contemporary sources, was preferable to the premature imposition of an artificial framework on historical events:

From such materials the philosopher can form no true judgement of the spirit and character of former times. No inferences from them can afford a solid foundation for a theory of the nature and progress of society. (2)

Yet Mackintosh was torn between the need for wide-ranging analysis of political behaviour, and the minutiae of historical drama:

1 'Sismondi's History of France', Edinburgh Review, XXXV, July 1821, 492-3.

2 Ibid, XXXV, 493.

...it is the general fault of all active politicians, who write the history of their own times, to consider public measures more as they indicate the character, or aid the ambition of statesmen and courtiers, than as they affect the public interest, or arise out of the temper and opinion of the people. The accidental humours of a court - the quarrels or intrigues of a Cabinet - which almost always appear to be among the occasional causes of political events, retain, in the eyes of ~~such~~^{such a} historian, that importance which he ascribes to them when engaged in public life, when they often hid from his view those more general and powerful agents, which a wise statesman is most concerned to study. (1)

Even the intrigues of courts held something for the historical moralist; the minor controversies of history could illustrate the manners of a nation. Mackintosh chose to discuss several historical problems, in each case with a high degree of judgment and accuracy. There was nothing of great interest in his conflict with Sir Nathaniel Wraxhall, whose Historical Memoirs of my own Time Mackintosh dissected and dismissed as 'all the forgotten slander of his time'.⁽²⁾ Much more relevant to his own interests was the complex question of the memoirs of James II. In 1813 the Prince Regent had purchased the manuscript of the Life of James II, compiled by the Jacobite Thomas Dicconson; it was edited and published in 1816 by the Rev. J.S. Clarke.⁽³⁾ Mackintosh's review was clear and judicious in its disentangling of the evidence for and against the authorship of James II; he distinguished those parts of the Life which could be assumed to be taken directly from James II's own lost memoirs, and those parts which were the work of the Jacobite editor.⁽⁴⁾ The interest for Mackintosh lay in the

1 'Sir George Mackenzie's Memoirs', ibid, XXXVI, October, 1821, 28.

2 'Modern English History', ibid, XXV, June 1815, 168-220; 'Sir Nathaniel Wraxall', ibid, October 1815, 527-41.

3 For the history of these papers, see A. Lytton Sells (ed.) The Memoirs of James II. His campaigns as Duke of York, 1652-60...London 1962, 13-47.

4 'Life of James II', Edinburgh Review, XXVI, June 1816, 402-30.

light thrown by the Life, unashamedly, upon the intrigues of Charles II and James II for the re-establishment of absolute power in England. From the historiographical point of view, James Macpherson's Original Papers were discredited by this publication.⁽¹⁾ Macpherson had had access to both the manuscript memoirs, and the Life, and had not distinguished between the words of James II himself, and those of the anonymous Jacobite compiler.⁽²⁾

Another problem was that of the authorship of the Eikon Basilike, the book of meditations accepted in the mid-seventeenth century as the work of Charles I. Mackintosh reviewed the speculations of Dr. Christopher Wordsworth, Master of Trinity College, Cambridge, in favour of Charles I.⁽³⁾ His article, accumulating the evidence in favour of the authorship of Bishop Gauden, now generally accepted, has been called 'perhaps the most cogent summary of the case for Gauden'.⁽⁴⁾ Dr. Wordsworth's reply failed to carry conviction.⁽⁵⁾ Thomas Thomson, the close associate of Francis Jeffrey, discovered the fragmentary Memoirs of Sir George Mackenzie, the Lord Advocate of Scotland under Charles II, and James II, and sent them to Mackintosh for his comments, which

1 James Macpherson Original Papers containing the Secret History of Great Britain from the Restoration to the accession of the House of Hanover, 2 vols., London 1775.

2 Edinburgh Review, XXVI, 422-30.

3 'Icon Basilike', Edinburgh Review, XLIV, June 1826, 1-47; C. Wordsworth 'Who wrote Eikon Basilike?' considered and answered, in two letters to the Archbishop of Canterbury...2 parts, London 1824, 1825.

4 F.F. Madden 'A new bibliography of the Eikon Basilike of King Charles the First, with a note on the authorship', Oxford Bibliographical Society Publications, New Series, III, 1949, Oxford, 1950, 150. See also P.A. Knachel (ed.) Eikon Basilike. The Portraiture of his Sacred Majesty in His Solitudes and Sufferings, New York, 1966. Introduction.

5 C. Wordsworth King Charles the First, the Author of Icon Basilike, further proved in a letter to His Grace the Archbishop of Canterbury, in Reply to the Objections of Dr. Lingard, Mr. Todd, Mr. Broughton, The Edinburgh Review, and Mr. Hallam, London 1827.

finally appeared in the Edinburgh Review.⁽¹⁾ Again, Mackintosh used the opportunity for a profitable shot at 'the Tory attempt to falsify the English history'; the view taken by Burnet, Fox, and Malcolm Laing, of General Monk, was vindicated by this new material.⁽²⁾ Much could be learnt from the example of Charles II's administration in Scotland:

The instruction afforded by this part of history is not confined to religious fanaticism, nor to the reign of Charles II. It is applicable to the prevailing opinion, and predominant passions of a people, whatever their source or their nature may be. It illustrates the inevitable consequences of the first departure from liberal policy, and the ultimate result of measures which are designed to extinguish opinions by force and fear. (3)

Even in these articles, it is clear that Mackintosh's interests lay in the wider study of the government and manners of a people, and in the contrast of free and despotic government; this appears most clearly in his articles on European history. In 1821 he reviewed the first three volumes of Sismondi's Histoire des Français,⁽⁴⁾ in which he considered the progress of a nation from barbarism to refinement. He agreed with Sismondi's praise for Charlemagne as the creator of a new civilised world. But he rejected the view that the 'uninteresting revolts of the sons of Louis le Débonnaire' could be said in any sense to represent a national blow for liberty; these were 'blind movements' of peoples, instruments in the hands of powerful leaders. And yet the consequences of the disruption of Charlemagne's empire were

1 Thomas Thomson to Mackintosh, 30 March 1821, Memoir of Thomas Thomson, Advocate, Edinburgh, 1854, 171-2; Sir George Mackenzie Memoirs of the Affairs of Scotland from the Restoration of Charles II, Edinburgh 1821; 'Sir George Mackenzie's Memoirs', Edinburgh Review, XXXVI, October 1821, 1-33.

2 Ibid, XXXVI, 15-17.

3 Ibid, XXXVI, 31-2.

4 'Sismondi's History of France', Edinburgh Review, XXXV, July 1821, 488-509; Sismondi, Histoire des Français, 3 vols., Paris, London, 1821.

favourable indirectly to the overthrow of arbitrary power, through the coming of that system of landholding known as the feudal system:

National feeling, generous ambition, useful enterprise, which had been almost lost in the immensity of a vast empire, were revived by the local attachments, the natural rivalry, the multiplied prizes of talent in a multitude of small principalities, bound together by language and religion more than by the theory of law or the name of a monarchy. Industry and population seem to have recovered, in spite of anarchy; and the feudal system which grew afterwards so enormous an evil, appears in the ninth century to have been a reformation of European society. (1)

In three other reviews, on Spain,⁽²⁾ Denmark,⁽³⁾ and Poland⁽⁴⁾ the roots of despotism were explored. Mackintosh found current general explanations for the decline of Spain inadequate; neither the extent of the Spanish empire, nor the impact of precious metals on the Spanish economy could fully account for it. The answer lay rather in the spirit and manners of the people, and in the excessive precautions taken to preserve the Catholic religion:

To make the Church of Spain safe, the mind of the people was emasculated. Where knowledge was barred, scientific and military progress was impossible; and though, paradoxically, a primitive society could defend itself effectively against invasion, it could not move

1 Ibid, XXXV, 506-7.

2 'Coxe's Memoirs of the Spanish Bourbons', *ibid*, XXI, February 1813, 175-207; this was a review of William Coxe's Memoirs of the Kings of Spain of the House of Bourbon from the accession of Philip the Fifth to the death of Charles the Third: 1700 to 1788... 3 vols, London 1813.

3 'Danish Revolutions under Struensee', *Edinburgh Review*, XLIV, September 1826, 260-283; this was a review of Mémoires de M. Falkenskiöld, Officier Général dans le service de S.M. Danoise, à l'Epoque de la Catastrophe du Comte de Struensee... London, Paris, 1826.

4 'Partitions', *Edinburgh Review*, XXXVII, November 1822, 462-528; in this Mackintosh reviewed three works: C.C.W. von Dohm Denkwürdigkeiten meiner Zeit, oder Beiträge zur Geschichte von letzten Viertel des achtzehnten und vom Anfang des neunzehnten Jahrhunderts 1778 bis 1806.

5 Bde Lemgo, 1814-19; A. de Ferrand Histoire des trois démembrements de la Pologne, pour faire suite à l'histoire de l'anarchie de Pologne, par Rulhière... 3 vols, Paris 1820; Mémoires et actes authentiques relatifs aux négociations qui ont précédées la partage de la Pologne. Tirés du portefeuille d'un ancien Ministre du XVIII siècle (J.E. von Goertz, Count von Schlitz)(Weimar) 1810.

to the offensive against a much more advanced civilisation, informed and protected by the latest technology. The monopoly of religion over the minds of people and ruler, had left them passive and lethargic, and prevented the development of an active virtue. As for Denmark, Mackintosh argued, quoting Molesworth, that the evidence seemed to disprove all assertions that legal despotism could be both efficient and harmless; on the contrary, the manners and morals of the people had been disastrously degraded:

Nothing can more clearly prove, that under absolute monarchy, good laws, if they could by a miracle be framed, must always prove utterly vain; that civil liberty cannot exist without political liberty; and that the detestable destruction lately attempted in this country by the advocates of intolerance between freedom and political power, never can be allowed in practice, without, in the first instance, destroying all securities for good government, and very soon introducing every species of corruption and oppression. (1)

The expansion of military despotism in Europe could be dated from the first partition of Poland, in 1772; as Burke had foretold, only a general resistance to what was virtually Asiatic government could save liberty in Europe.⁽²⁾ The partition had violated the right of ancient possession:

It was not an attack on the balance of power - the great outwork of national independence; it was the destruction of national independence itself. (3)

The destruction of a nation, the will to conquest and empire, were among the greatest evils of human society; the division into national

1 Ibid, XLIV, 381.

2 Ibid, XLIV, 380-2.

3 Ibid, XXXVII, 512-3.

communities was one of its greatest advantages. The Poles had shared language, literature, institutions, and the custom of independence; these moral bonds of the community could alone arouse the spontaneous and patriotic virtues that could mould a nation:

When national spirit is destroyed, though better forms may be imposed by a conqueror, there is no farther hope of those only valuable reformatations which represent the sentiments and issue from the heart of a people. (1)

The partition of Poland became the model for the confrontation of ancient constitutionalism and arbitrary conquest. The reformation in the Polish state between 1772 and 1792 seemed in retrospect to be directed by liberal yet cautious constitutionalists, perfectly performing their legislative functions:

History will one day do justice to that illustrious body, and hold out to posterity, as the perfect model of a most arduous reformation, that revolution which fell to the ground from no want of wisdom on their part, but from the irresistible power and detestable wickedness of their enemies. (2)

The Congress of Vienna, the apotheosis of the despotic principle, acted according to the precedent of the successive partitions, the Holy Alliance reconstructed Europe along artificial frontiers in their own interests, ignoring the existence of ancient nations and the principles of international law. Historical analysis of the progress of despotism in Europe was an element in the nationalism of the Whig opposition.

In spite of a high reputation, Mackintosh had still published nothing on his historical work by 1826. After the foundation of the

1 Ibid, XXXVII, 495.

2 Ibid, XXXVII, 501-2.

Society for the Diffusion of Useful Knowledge, Brougham asked him for an introduction to the historical series in the Library of Useful Knowledge, a Preliminary Discourse on History.⁽¹⁾ Mackintosh agreed; but indolence set in, and Brougham gave up hope of obtaining the work.⁽²⁾ The History of England, a popular introduction commissioned by Dr. Lardner for his Cabinet Cyclopaedia, was Mackintosh's first historical publication;⁽³⁾ for this he received £1500, but had, apparently, to endure much editorial harassing.⁽⁴⁾ The History was to accompany a work on Ireland by Thomas Moore, and one on Scotland by Sir Walter Scott, whom Mackintosh was successfully charged with enlisting.⁽⁵⁾ The first volume of the History appeared in 1830, the second in 1831; Mackintosh did not live to complete the third.⁽⁶⁾

It would be impossible to analyse the whole text of this work here; however, some features which have a bearing on Mackintosh's historical ideas will be noted. In the Introduction he declared his subject to be 'the history of a great people towards liberty during six centuries'.⁽⁷⁾ There are aspects of the work that justify the worst caricatures of the 'Whig interpretation': the translation

1 M.C. Grobel 'The Society for the Diffusion of Useful Knowledge, 1826-1846', Unpublished M.A. thesis, 4 vols, University of London, 1933, II, 273.

2 Brougham to Mackintosh, 4 October 1827. Brougham MSS 1434. University College London; Knutsford Life and Letters of Zachary Macaulay, 446.

3 The History of England from B.C. 55 to A.D. 1572. Continued by W. Wallace, 10 vols, London 1830-8.

4 Mackintosh to Dr. Lardner, 26 September 1829, N.L.S. MSS 3908, f. 143; G.O. Trevelyan The Life and Letters of Lord Macaulay, I, 318.

5 Mackintosh to Sir Walter Scott, 14 April 1829. N.L.S. MSS 3908 f. 269; The Journal of Sir Walter Scott, 2 vols, London, 1926, II, 268-70; E. Johnson Sir Walter Scott: the great unknown, 2 vols, London 1970, II, 1123. For Moore's part in the venture, see The Letters of Thomas Moore, edited by W.S. Dowden, 2 vols, Oxford 1964, II, 623n, 636-7; Memoirs, Journal, and Correspondence of Thomas Moore, edited by Lord John Russell, 8 vols, London 1854, VI, 16-17.

6 Memoirs, II, 456.

7 History of England, I, vi.

into distant periods, for example, of the principles of free trade,⁽¹⁾ the balance of power,⁽²⁾ and international law.⁽³⁾ But this was not simply a Whig history of the growth of the constitution; it was intended to be a study of those circumstances which had moulded the spirit of a civilisation.

In his first volume Mackintosh examined the elements that went to make up the nation itself; he considered the problems of race and language, paying the conventional tribute to the Teutonic race:

a people as much behind the Gauls in attainment and superficial refinement, as beyond them in that unshackled activity of mind which is sole parent of the dignity and advancement of mankind...The energy was awakened, which, after many ages of storm and darkness, qualified the Teutonic race to be the ruling portion of mankind, to lay the foundation of a better ordered civilisation than that of the eastern or ancient world, and finally to raise into the fellowship of these blessings the nations whom they had subdued, but with whom they are now undiscernibly mingled. (4)

Yet the reasons for this marked difference in national character still remained to be explored. Mackintosh showed himself here to be aware of the work of German historians and philologists, who 'used learning in a philosophical spirit'; he had been introduced by A.W. Schlegel to the writings of Niebuhr, and knew the work of Wilhem von Humboldt.⁽⁵⁾ Their critical use of the fragmentary sources would enable a clearer picture of antiquity to be drawn. Language, literature, popular mythology, all were of the greatest significance in the emergence of a nation. In Britain the emergence

1 Ibid, I, 133.

2 Ibid, I, 123.

3 Ibid, I, 9.

4 Ibid, I, 9.

5 Ibid, I, 9-10; Schlegel to Mackintosh, 22 December 1816, B.M.Add. 52452; Mackintosh to Schlegel 21 August 1821. Mscr Dresdenensis e90 XIX Bd 15 Nr 5.

of one nation from the many Saxon principalities was slow; the reign of Alfred stood out from this period of 'obscure barbarism', at least in popular mythology.⁽¹⁾ The conflict between Dane and Saxon had threatened the unity of the kingdom:

As the animosity between the Danes and Saxons is to be considered as the real, though often unseen, cause, of those contests for the throne, which appeared to originate in the ambition of individuals, so the final prevalence of the Saxon is to be imputed to their superiority in numbers and civilisation. (2)

The language of the Anglo-Saxons was to become that of the English, and their literature had been unjustly ignored by English scholars. The resistance of the Anglo-Saxon people to the Norman conquest had been that of a nation in arms; their subjugation could not altogether erase the character of the people. From the reign of William II, the process of assimilation began; and, by the fourteenth century, the language and the constitution had emerged, and the English nation was in existence.

The enduring characteristic of the English people was, of course, said to be its love of liberty; however, Mackintosh strongly criticised both Whig and Tory antiquarians, 'guided by no philosophical spirit', for maintaining that the elements of a regular constitution had existed in Saxon times, establishing a precedent for countless generations. The Tory had looked for absolute monarchy, the Whig for the balanced constitution:

1 History of England, I, 41-2

2 Ibid., I, 63-4.

No one at that time was taught, by a wide survey of society, that governments are not framed after a model, but that all their parts and powers grow out of occasional acts, prompted by some urgent expediency, or some private interest, which in the course of time coalesce and harden into usage; and that this bundle of usages is the object of respect and the guide of conduct, long before it is embodied, defined and enforced in written laws. Government may be, in some degree, reduced to system, but it cannot flow from it. (1)

Though something might be known of Anglo-Saxon institutions they bore no resemblance at all to the two Houses of Commons. The same point was hammered home with reference to all legal and constitutional change. Legal developments under Henry II had been the result of slow evolution rather than the initiative of the monarch.⁽²⁾ Magna Carta, 'the first outline of a parliamentary constitution', pronounced certain universal principles of government; yet the implications of these principles would be discovered slowly, as the progress of liberty, and moral improvement allowed.⁽³⁾ Simon de Montfort's advance towards the establishment of regular assemblies was the work of a man quite unconscious of its historic significance:

He thus unknowingly determined that England was to be a free country; and he was the blind instrument of disclosing to the world that great instrument of representation which was to introduce into popular government a regularity and order far more perfect than had heretofore been purchased by submission to absolute power. (4)

The regular meetings of burgesses and knights had a slow but profound effect on the structure of English society, as a kind of 'voluntary aristocracy' was evolved.⁽⁵⁾ Similarly, the changes in the position

1 Ibid, I, 72.

2 Ibid, I, 171-2.

3 Ibid, I, 217-22

4 Ibid, I, 238.

5 Ibid, I, 243-6.

of Parliament arising from the Reformation stemmed from the 'sensuality, rapacity, and cruelty of Henry VIII'.⁽¹⁾ This emphasis on the 'law of heterogeneity of ends' is a very marked feature of this History; civilisation was promoted through unconscious agents.

A further aspect of the work was the care taken with the European background to English history. The investiture contest was sketched at some length, to set the scene for Becket.⁽²⁾ A survey of Europe in the mid-fifteenth century forecast the encroachment of absolute power on all existing parliaments and assemblies, as at the same time, an age of discoveries transformed the world.⁽³⁾ Portraits of Luther and Calvin illustrated the Reformation in Europe, as the rise of the Jesuit order did the Counter-Reformation.⁽⁴⁾ In the volume dealing with the reign of Elizabeth, the story was dominated by the theatrical conflict of the two Queens, in its European setting. Mackintosh had long been convinced by Malcolm Laing's proofs of the guilt of Mary Queen of Scots.⁽⁵⁾ On the massacre of St. Bartholomew's Night, Mackintosh had collected some new material, though he did not live to write the chapters; Macaulay had, on a visit to Paris, in March 1832, obtained for him from Chateaubriand copies of the despatches of the Papal Nuncio in 1572.⁽⁶⁾

Mackintosh's aims in the History of England had been very limited; he hoped merely to present a narrative of events that would 'strengthen

1 Ibid, II, 240-1.

2 Ibid, I, 145-52.

3 Ibid, I, 379-82.

4 Ibid, II, 131-49, 354-60.

5 Ibid, III, 38-127; Memoirs, I, 346.

6 Ibid, III, 233, 354-60; Macaulay to Mackintosh, 30 March, 3 13 April 1832, B.M.Add. MSS52453.

the moral sentiments'.⁽¹⁾ Yet certain historical assumptions were still apparent. He distrusted the premature theorising of, for example, Augustin Thierry, who had been diverted by the 'spirit of system', but whose work he otherwise admired.⁽²⁾ But within his narrative, Mackintosh was concerned to identify and explain the growth of the dominant elements in the national character; periodically the narrative was broken by a consideration of English society, its institutions, and its culture, at a particular stage in history. Progress towards civilisation was assumed; but it was the blind and unconscious evolution of a nation, in an unenlightened age. The English instinctively and almost accidentally acquired the habits of freedom, though they had not yet learned, consciously, to combat the encroachments of despotic power.

Mackintosh's Life of Sir Thomas More was an even slighter piece of work; he was persuaded by Dr. Lardner to undertake this for a series on Eminent British Statesmen.⁽³⁾ Mackintosh had for some time been interested in More's career; he was able to use new published materials; the Journals of the Lords and Commons, and the State Papers of King Henry VIII's reign. But he largely followed Roper's life of More. He saw his subject as the 'earliest champion of parliamentary liberty'.⁽⁴⁾ Utopia was for him a significant milestone in the history of toleration; More was absolved from the

1 History of England, I, vi

2 Augustin Thierry Histoire de la conquête de l'Angleterre par les Normands, de ses causes, et de ses suites, jusqu'à nos jours...

3 vols., Paris 1825; History of England, I, 105-243.

3 Mackintosh to Dr. Lardner, 26 September 1829. N.L.S. MSS 1809, f.143.

4 Lives of Eminent British Statesmen (by Sir James Mackintosh, John Forster, and Thomas P. Courtenay). 7 vols, London, 1831-9, I, 1-110.

charge of persecution. His deference to papal authority was excused as:

at least...an ancient and venerable control on licentious opinions, of which prevailing heresies attested the value and the necessity. (1)

Primarily, Mackintosh saw in More an example of heroic moral excellence, provoked by the wickedness of Henry VIII, an example hardly blemished by the holding of mistaken opinions.

The History of the Revolution in England in 1688, the fragment which was the only result of Mackintosh's massive researches, was published posthumously; it was compiled, and continued, by an unskilful editor, who clearly failed to knit his materials together.⁽²⁾ But the work was still, in style, research, and historical judgment, a vast improvement on Fox's History; Jeffrey believed that it had successfully answered those questions which Fox had neglected.⁽³⁾ Macaulay, however, in his famous essay on 'Sir James Mackintosh', suggested that 'there is perhaps too much disquisition and too little narrative'.⁽⁴⁾ The contrast sufficiently indicates Mackintosh's transitional position in the shaping of the Whig tradition. The History of the Revolution was conceived as a 'conjectural' history; though there are certain signs that this was the work on which Macaulay was to build.

According to Stewart's definition, the 'conjectural' historian used his material to recreate the recurring patterns of human behaviour

1 Ibid, I, 78.

2 James Mackintosh History of the Revolution in England, in 1688, Comprising a View of the Reign of James the Second, from his Accession to the Enterprise of the Prince of Orange...and completed to the settlement of the Crown by the Editor (W. Wallace)...London 1834.

3 F. Jeffrey 'Memoirs of Sir James Mackintosh', Edinburgh Review, LXII, 249-50.

4 T.B. Macaulay 'Sir James Mackintosh', in Critical and Historical Essays, edited by A.J. Grieve, 2 vols, Everyman edition, London 1930, I, 279.

in the past; he worked with certain fixed assumptions about the political psychology of individuals and of nations. In Mackintosh's work these assumptions are easily identifiable. The people, an undefined entity, were easily swayed, governed by passions and instincts, aroused by sympathy and the force of example. When arbitrary power appeared to be in the ascendant, as it was at the beginning of the reign of James II, they could be won over to it.⁽¹⁾ The force of popular opinion scarcely existed, since the people were largely illiterate; the only channel of communication was the pulpit, and the poorest classes were those most likely to be swayed by the emotionalism of the Nonconformist sects.⁽²⁾ In the greatest of crises, it was the temperament of the people, rather than the weighing of principles, which would determine the outcome:

In conjunctures so awful, where ~~they~~^{men} feel more than they reason, their conduct is chiefly governed by the boldness or wariness of their nature, by their love of liberty or their attachment to quiet, by their proneness or slowness to fellow-feeling with their countrymen. The generous virtues and turbulent passions rouse the brave and aspiring to resistance; some gentle virtues and useful principles second the qualities of human nature in disposing many to submission. (3)

The 'feelings of the people' were ultimately governed by the example set by their natural leaders; Mackintosh had little more faith in the behaviour of the Commons than in that of the people. They too had initially been inclined to respect the authority of James, and to show themselves submissive, unsympathetic even to the

1 History of the Revolution in England, 2.

2 Ibid., 169.

3 Ibid., 293.

4 Ibid., 38-9.

sufferings of the victims in the aftermath of Monmouth's rebellion.⁽¹⁾

Such a Parliament set little store by the Habeas Corpus Act, an 'odious novelty', an experiment of party warfare. Yet support for the Revolution was to come from this unpromising source:

never was there a more remarkable example of the use of a popular assembly, however ill composed, in extracting from the disunion, jealousy, and ambition of the victorious enemies of liberty, a new opposition to the dangerous projects of the Crown. The vices of politicians were converted into an imperfect substitute for virtue; and though the friends of the constitution were few and feeble, the inevitable divisions of their opponents in some degree supplied their place.⁽²⁾

The inclinations of the Tory party were divided. James offered power to his adherents; in 1687 his purge of the corporations, and his extensive use of patronage illustrated the attractions of despotic power. The offices that James could dispose of could give his followers the opportunity to exercise arbitrary power for themselves - and further corrupt the nation:

No modern legislation or practice had then withdrawn any part of that administration from lieutenants, deputy lieutenants, sheriffs, coroners, in whose hands it had been placed by the ancient laws. A justice of the peace exercised a power over his inferiors never controlled by public opinion, and for the exercise of which he could hardly be said to be practically amenable to law. ⁽³⁾

For the younger gentry, the size of the standing army increased their chance of a military career.

Yet other Tories, for whom the habit of attachment to their Church was strong, stood out against the monarch. In resisting

¹ Ibid, 38-9.

² Ibid, 39-40.

³ Ibid, 191-2.

James' ecclesiastical measures, they went against the declared doctrine of non-resistance firmly preached by the Church of England. The Church itself did not allow such a doctrine to prevent it repelling assaults on its own monopoly. There lay James' greatest mistake:

he was so ignorant of human nature as to imagine that speculative opinions of a very extravagant sort, even if they could be stable, were sufficient to supersede interest, and habits, to bend the pride of high establishments, and to stem the passions of a nation in a state of intense excitement. (1)

The leaders of the Protestant Tories, Danby, Rochester, Nottingham, gradually abandoned James' service; in the country at large resistance grew:

The clergy and gentry were for the first time discontented with the Crown. The majority of the nobility, and the growing strength of the commercial classes, reinforced by these unusual auxiliaries, and by all who either hated popery or loved liberty, were fully as much disaffected to the King as the great body of the people. The nation trusted their natural leaders, who, perhaps, gave more than they received, the impulse on this occasion. (2)

In this interpretation of the reign of James II, the partisans of liberty played little part; they were a small minority of the 'opulent and noble'. The revolution arose not from a principled resistance, but as a natural response of those who held power in society to a challenge to their entrenched rights. (3)

Mackintosh was here, however, investigating not merely the psychology of political behaviour, but also a class of political

1 Ibid, 152.

2 Ibid, 215.

3 In this Mackintosh followed Fox. See J.R. Dinwiddy 'Charles James Fox as Historian', Historical Journal, XII, 29-30.

institutions. James II's aims and methods were to be reconstructed in the light of the characteristic behaviour of despotic rulers. He inherited a situation in which all circumstances were favourable to the establishment of arbitrary power. His revenues, his standing army, his ties with Louis XIV, all provided him with the weapons to continue that undermining of the nation's liberties begun by Charles II. The judicial practices of Judge Jeffreys, approved by James, and the 'military atrocities' committed in the West Country in 1685 were evidence of an immediate worsening in the government:

As these acts were done with the aid of juries, and without the censure of parliament, they also afford a fatal proof that judicial forms and constitutional establishments may be rendered unavailing by the subserviency or the prejudices of those who are appointed to carry them into effect. The wisest institutions may become a dead letter, and may even, for a time, be converted into a shelter, and an instrument of tyranny, when the sense of justice, and the love of liberty, are weakened in the minds of a people. (1)

The King's demand to be able to dispense with the letter of the law - and in particular the penal laws against Catholics - further suggested the degeneration of legal forms in England; the judges who acquiesced in James' demands had become his instruments of oppression. His standing army, of unprecedented size, was his strongest weapon, and the hallmark of the tyrant. Yet, for James, the army, to be loyal, had at least to be officered by Catholics.

Mackintosh was not concerned to argue, as Fox had done, that James aimed primarily at the establishment of absolute monarchy in England, rather than the propagation of the Catholic religion. For him, James' methods, and his religion - the 'ideology' of the despot - were inextricably mingled:

¹ Ibid, 36.

As James was a conscientious and zealous Catholic, it is probable that he was influenced in every measure of his government by religion, as well as ambition: both these motives coincided in their object. His absolute power was the only security for his religion, and a Catholic army was the most effectual instrument for the establishment of absolute power. (1)

Absolute power, by its very nature, could brook no opposition in any sphere:

The royal apostle is seldom convinced of the good faith of the opponent whom he has failed to convert. He soon persuades himself that the pertinacity of the heretic arises more from the depravity of his nature than from the errors of his judgment. (2)

The problem was to disentangle this aspect of James' policy from the issue of religious toleration, in itself, of course, desirable, but in this age premature. Anglicans recognised that James' intention was the exaltation of the prerogative, through the overthrow of the established Church in England, since no arbitrary ruler could tolerate an alien established religion. James made no secret of his proselytizing zeal. He had quickly resumed diplomatic relations with the Papal Court; he attempted to convert his daughter, Princess Anne, his ministers, officers of the army, and leading members of the Universities. By the last years of his reign, there was clear evidence that his scheme would not cease with the achievement of toleration:

All the measures of his internal government, during the eighteen months which ensued, were directed to the overthrow of the Established Church, an object which was to be attained by assuming a power above law, and could only be preserved by a force sufficient to bid defiance to the repugnance of the nation. An absolute monarchy, if not the first instrument of his purpose, must have been the last result of that series of victories over the people which the success of his design required. (3)

1 Ibid, 50.

2 Ibid, 80.

3 Ibid, 132.

The royal move against the universities was in itself an assault on the very corporate practices of the Church. And in moving from the grant of individual dispensations from the penal laws, to a 'Declaration for Liberty of Conscience', suspending the exercise of all penal laws, James had clearly assumed the right of legislative authority.⁽¹⁾ The public reception of the Papal Nuncio marked a final breach with the Church of England; at Court the Jesuit Father Petre rose to power.

No analysis of despotic power could confine itself to England alone; Mackintosh is here describing an episode in the 'violent animosity then raging between the two parties who divided England and Europe'.⁽²⁾ Elsewhere in Europe there was little hope for liberty. Venice, 'the last of the Italian states which retained a national character', had withdrawn from European politics. There was only one potential leader against despotism:

there remained on the continent, no security against the ambition of Louis, no hope for the liberties of mankind but the power of that great republic, animated by the unconquerable soul of the Prince of Orange. ⁽³⁾

On James' accession, one of his greatest strengths was the bond formed with Louis XIV:

by closer ties than those of treaty, by kindred, by religion, by similar principles of government. ⁽⁴⁾

English Protestants, however, had constantly before their eyes a precedent for James' actions, in the revocation of the Edict of Nantes.

1 Ibid, 146.

2 Ibid, 85.

3 Ibid, 4.

4 Ibid, 3.

The history of the harassing and final persecution of the Huguenots was an instance of the way in which tyrannical power was unable by its nature to contain the mildest opposition. James II had approved of these measures, typical of every state in Europe, except Holland. The English Catholics, aristocrats, moderate in their politics, mistrusted James' policy; their party at Court was supported by Spain and the Papacy, But it was the party of France and the Jesuits which gained the ascendant; and the Jesuits exemplified the religious fanaticism which gave such a backing to arbitrary power:

Peculiarly subjected to the see of Rome by their constitution, they became ardently devoted to its highest pretensions, in order to maintain a monarchical power, of which they felt the necessity for concert, discipline, and energy in their theological warfare. (1)

Mackintosh's work, therefore, formed a fragment of the history of political civilisation in England; and his framework was basically that of the 'conjectural' historian. It has been suggested that the Whig historian:

is apt to imagine the British constitution as coming down to us by virtue of the work of long generations of Whigs, and in spite of the obstructions of a long line of tyrants and Tories. In reality it is the result of the continual interplay and perpetual collision of the two. (2)

It is evident that Mackintosh's work does not fit the classic definition. In the History of the Revolution, the constitution was by no means the final arbiter of political action. On the other hand, 1688 did not represent for Mackintosh 'a new and regular plan of liberty' as Hume and other 'establishment Whigs' had argued.⁽³⁾ The spirit

1 Ibid, 232.

2 H. Butterfield The Whig Interpretation of History. Reprinted, London 1968, 41.

3 See David Hume The History of Great Britain (The Reigns of James I and Charles I), Edited by Duncan Forbes, Penguin, 1970. Introduction, 24-38; I. Kramnick Bolingbroke and his circle, 127-36.

of the constitution was already present; but its letter had to be tested against the principles of liberty:

Though the constitution of England had been from the earliest times founded on the principles of civil and political liberty, the practice of the government, and even the administration of the law had often departed very widely from these sacred principles...During the dark and tumultuous periods of English history, kings had been allowed to do many acts, which if they were drawn into precedent, would be subversive of public liberty. (1)

There was no doubt, according to Mackintosh, that the king did possess certain prerogatives which could be used to subvert the constitution; if precedent afforded no defence in the face of the aggression of the monarch, then insurrection was 'an act of public virtue'. (2)

One key to Mackintosh's reputation as a Whig historian lies in the style of his history; and this may be related to his approach to his source material. Mackintosh had followed the development of new critical methods in the study of history and of philology in France and in Germany; his friendship with Schlegel, Sismondi, Guizot, de Barante, his reading of Niebuhr, Savigny and Humboldt, his awareness of the growth of schools of historical studies in France and Germany all contributed to an understanding of a new historical philosophy, in which the task of the historian was to recreate the atmosphere of past ages through a total absorption in the evidence. Mackintosh did not attempt to employ local colour, and popular literature, in the way that Macaulay was to do; his method was rather comparable to that of Guizot, for whom history represented, first the collection of facts, the 'anatomy of history', secondly, the laws governing

1 History of the Revolution in England, 60.

2 Ibid, 299.

society, its 'physiology', and, thirdly, the life that had animated a civilisation, its 'living physiognomy'. Professor Johnson has emphasized the influence of Mme de Stael on Guizot's historical thought. Both aimed to 'characterise' the mood of a nation, within the framework of a political and moral message.⁽¹⁾

Mackintosh aimed, similarly, in the highlights of his history, at illustrating the impact of events on national feeling, reliving the historical past for his reader through detailed and picturesque narrative. His account of the aftermath of Monmouth's rebellion, the pathetic trials of Judge Jeffrey's victims, was intended to rouse the compassion of its readers through its tale of individual suffering, at the same time as it focussed on tyrannical policy. Similarly, the petition and trial of the Seven Bishops was given the full theatrical treatment; such an event could spark off the greatest of revolutions, by bringing the feelings of the nation to a climax:

All the vices of that distempered state in which a government cannot endure a fearless discussion of its principles and measures, appeared in the peculiar evils of a single conspicuous prosecution. The feelings of mankind, in this respect more provident than their judgement, saw, in the loss of every post, the danger to the last entrenchments of public liberty

By this single episode, James' government stood condemned.⁽²⁾

As a Whig historian, Mackintosh did of course, have a political message. As it was his duty to arouse the moral sentiments of his

1 D. Johnson Guizot Ch.VII, especially 333-5; compare also the 'philosophical' basis of the history of Barante, F. Engel-Janosi Four Studies in French Romantic Historical Writing, Baltimore 1955. 57-88. On the general influence of Niebuhr in England, see D. Forbes The Liberal Anglican Idea of History, Cambridge 1952, 13-20, and passim; R. Preyer Bentham, Coleridge and the Science of History, Bochum-Langendreer 1958, 27ff; H. Trevor-Roper The Romantic Movement and the Study of History, London 1969, passim. More generally, see E. Neff The Poetry of History, New York, 1961, edition, 94-128.

2 History of the Revolution in England, 278.

reader, so he also had to try the actions of his characters by 'the immutable principles of morality'.⁽¹⁾ The act of revolution was one which had to be justified. Mackintosh drew a distinction between a 'reformatory revolt', and a defensive insurrection. Where the evils of despotism had totally corrupted the character of a people, their rulers would have to maintain absolute power while transforming slaves into free men. In England, however, the revolt had a limited end, the preservation of the liberties that already existed. Even there, there was danger in disturbing the civil order; but the greatest safeguard lay in the character of England's deliverer, and in the relationship already existing between England and Holland. The Prince of Orange had single-handedly defied Louis XIV, and in saving his country had assumed the stature of a hero of classic proportions, achieving:

the most signal triumph of a free people over might invaders since the defeat of Xerxes by the Greeks. (2)

Praise reached preposterous heights:

Perhaps the history of the world does not hold out a better example, how high above the reach of fortune the pure principle of obedience to the dictates of conscience, unalloyed by interest, passion or ostentation, can raise the mind of a virtuous man. (3)

The genesis of this Whig history is to be found in that transformation of an earlier republicanism which Venturi has pointed out in relation to an earlier period. Reverence for ancient republics has become a reverence for their heroic monarch; William III is identified with Brutus.⁽⁴⁾ It is difficult not to see in 1688 something of a

1 Ibid, 293.

2 Ibid, 325.

3 Ibid, 320.

4 Venturi Utopia and Reform in the Enlightenment, 62-3.

'reformatory revolt', a moral, as well as a political reformation.

Politically, Mackintosh had written a history of the progress of liberty, as it emerged, indirectly through the clash of circumstances and interest, and directly, through the intervention of a great moral leader. His work still appeared to be within a 'philosophical' framework. Yet his assumptions about human nature were grounded in his belief in an innate moral sense; and in order to appeal to the moral sentiments of his readers it was necessary to describe, to intuit, the passions, the prejudices, and the political behaviour of the past. Mackintosh left to Macaulay not only the fruit of his extensive researches, but an insight into the dramatic and picturesque possibilities of seventeenth century history.⁽¹⁾ Mackintosh hailed Macaulay as 'the hope of liberty in England';⁽²⁾ and Macaulay's own History of England is also a drama of two warring principles, set against the growth of political civilization in England. Whig history in the nineteenth century emerged from a 'philosophical' framework, and 'republican' sentiment.⁽³⁾

1 Macaulay acknowledged the debt. T.B. Macaulay The History of England from the Accession of James II. Everyman edition, 3 vols, London 1906, I, 302. However, it was exaggerated by Croker in his hostile review of 'Mr Macaulay's History of England', Quarterly Review, LXXXIV, March 1849, 549-630; see also Notes and Queries, 15, cxc, 181ff. Macaulay also inherited some of Mackintosh's errors; see J. Paget The New 'Examen', with a critical introduction by the Right Hon. Winston Churchill, Manchester, 1934, 149-59. For a balanced judgement, see Firth, Commentary on Macaulay's History of England, 57-64.

2 William Empson to Monteagle, 31 August, (1829). Monteagle Papers 13370(4). National Library of Ireland.

3 M.A. Thomson Macaulay, London, 1959, passim especially 18-19; J.G.A. Pocock, 'Machiavelli, Harrington, and English Political Ideologies in the Eighteenth Century', William and Mary Quarterly, 3rd series, XXII, 582-3.

X ETHICS AND EDUCATION.

One recurring theme in Mackintosh's career is the clear distinction between the philosophy on which he based his political and historical writings, and that of Benthamite utilitarianism. This difference was to be exposed most clearly in James Mill's unprecedently virulent A Fragment on Mackintosh (1), a destructive critique of Mackintosh's Dissertation on Ethical Philosophy (2). The antipathy between the two men was a longstanding one (3); it reflected not merely a clash of temperament, but Mackintosh's lifelong attempt to discredit the 'selfish system' of morality. Even though he decided not to take up the offer of the Chair of Moral Philosophy at Edinburgh in 1820, there is no doubt that Mackintosh saw himself, as others saw him, as one of the last representatives of the Scottish philosophy of Reid and Stewart (4). Mackintosh's writings on moral philosophy were firmly based on the study of eighteenth century French and English moralists, confirmed rather than influenced by some knowledge of French and German philosophy.

Mackintosh's occasional part in Benthamite educational projects in no way implied an acceptance of utilitarian objectives. He shared an enthusiasm for the new Lancasterian system of instruction; on 2 August 1813, he took the chair at a meeting organised by James Mill and his followers to launch the West London Lancasterian Institution, which aimed to provide schools for the poorer children

1 (James Mill) A Fragment on Mackintosh: being some strictures on some passages in the Dissertation by Sir James Mackintosh, prefixed to the Encyclopaedia Britannica, London 1835.

2 A Dissertation on the Progress of Ethical Philosophy, chiefly during the seventeenth and eighteenth centuries, With a Preface by the Rev. William Whewell, Edinburgh, 1836.

3 James Mill to Macvey Napier, 10 November 1819, and 11 May 1820. Selections from the Correspondence of... Macvey Napier Esq., Edited by his son, Macvey Napier, London, Oxford, 1879, 24ff.

4 See L. Stephen The English Utilitarians, II, 315-20; J. McCosh The Scottish Philosophy, biographical, expository, critical, from Hutchinson to Hamilton, London, Cambridge, 1875. 346-359

of the area (1). In February 1814, an association was founded to promote Bentham's Chrestomatic School; the promoters hoped to raise £3000, of which Mackintosh, with Brougham, Mill, William Allen, Joseph Fox, and Edward Wakefield, was to be one of the trustees (2). Bentham, in June 1815, hoped that Brougham, Mackintosh, and Romilly would remain at the head of the scheme (3). Yet Mackintosh seems to have given little time to the venture, which eventually resulted only in the publication of Bentham's Chrestomathia. (4)

The only official academic position ever held by Mackintosh was that of Professor of Law and General Polity at the East India College at Haileybury, where he taught for two days a week, from 1818 to 1824, combining this with his parliamentary duties. There he lectured on English history, and 'constitutional jurisprudence', and on the rudiments of moral philosophy. A sketch of the framework of one of his courses has survived, and illustrates how far his moral philosophy was already formed; all the arguments of the Dissertation are present in this outline (5). He drew there the distinction which he believed to be the key to the philosophy of mind, between the criterion of good and bad actions, and the origin and nature of the moral sentiments. He saw the conscience as the supreme moral faculty, formed through the gradual association of and fusion of the moral sentiments; utility was to be accepted as a general rule but not as

1 A Bain James Mill, London, 1882, 96. See also I. Cumming Useful Learning. Bentham's Chrestomathia with particular reference to the influence of James Mill on Bentham. University of Auckland, Bulletin No. 56, Education series No. 3, 1961, 13-21.

2 Bain op.cit. 87.

3 Bentham to Prince Adam Czartoryski, June 1815, Bentham Works, IV, 530.

4 Chrestomathia: being a collection of papers, explanatory of the design of an institution, proposed to be set on foot, under the name of the Chrestomathic Day School, or Chrestomathic School, for the extension of the new system of instruction to the higher branches of learning, for the use of the middling and higher ranks of life, London, 1815 (Not published until 1816.)

5 Memoirs, II, 362-71.

a motive for action. The moral science were divided into ethics and jurisprudence:

Ethics relate to those virtuous dispositions of mind from which right conduct flows; Jurisprudence relates to those outward acts of man which are directly injurious to his fellow men - a distinction of primary importance, often overlooked, and seldom pursued to all its consequences. (1)

He put forward here his view that punishment had to be both deterrent and related to the disposition of the criminal, and the general mood of the nation. He dealt with the laws of the state - civil, constitutional, and criminal - and with other 'moral rules' - the Law of Nature and the Law of Nations. At Haileybury, he joined Malthus, and the two men became friends; they both did their best to moderate the 'furious rage for Punishment of that Dominican run mad, Lebas', when a minor revolt broke out in the College in 1822 (2).

But his real inclinations were still elsewhere. In April 1820, Dr Thomas Brown, who held a Chair of Moral Philosophy at Edinburgh as Dugald Stewart's colleague, died; in June, Stewart was to resign. It was clear that there would be competition for the succession. Mackintosh lost no time in putting out feelers to his old and trusted friends in Edinburgh; he wrote to Gillies:

There is no retreat for my age which I should like so well as Edinburgh... The death of poor Dr Brown which occurred on Sunday has suggested to me the possibility that his Professorship which six and thirty years ago was an object of my ambition might now afford me an eligible retirement & a competent addition to my income. (3)

His friends reacted with enthusiasm; they predicted that all opposition would be swept away if Mackintosh agreed to stand:

Your admission would infuse life blood into the institution which begins to require it. It would be the commencement of a new era of transplendent lustre. (4)

1 Ibid, II, 367

2 Entry in Journal 6 and 22 December 1822. B.M. Add. MSS 52445; F.C. Danvers et al. Memorial of Old Haileybury College. London 1894, 233-5
J. Ponar Malthus and his Works. 2nd edition. London 1924. 428-30.

3 Mackintosh to Gillies 5 April 1820. B.M. Add. MSS 52453.

4 John Leslie to Mackintosh 17 April 1820. B.M. Add. MSS 52453.

Even the Lord Provost added his assurance that if Mackintosh wished for the post he would personally propose him, and competition would vanish (1). There were rumours of opposition on the grounds of Mackintosh's politics and, worse, his infidelity; but he still commanded a majority of the Town Council, the electing body (2). But Jeffrey anticipated considerable resistance to this early retirement from Mackintosh's parliamentary colleagues, and he was right to do so (3). Mackintosh could not resist the pleas of Holland House, nor the persuasiveness of a long letter from Lord Lansdowne (4). He decided not to stand; and the chair went not to the young William Hamilton, but to the unknown John Scott. The episode was typical of Mackintosh's divided affinities; he never achieved the academic position for which he so often longed. Yet he again made it clear that his strongest intellectual ties were with the Scottish universities, when, in 1823, he was elected Lord Rector of Glasgow University, narrowly defeating Sir Walter Scott for the honour (5).

The University of London was originally conceived by the poet Thomas Campbell as an institution that would combine the virtues of all the Scottish universities (6). In the development of the venture, however, the Benthamites, led by James Mill though without the active interest of Bentham himself, were increasingly prominent (7). James

1 The Lord Provost of Edinburgh to Mackintosh 21 April 1820. B.M.Add. MSS 52453.

2 Henry, Lord Cockburn Memorials of his Time, Edinburgh 1856. 348.

3 Jeffrey to Mackintosh 15 and 20 April 1820, B.M.Add. MSS 52453.

4 Mackintosh to Lord Holland 18 April 1820 B.M.Add. MSS 51653; Whishaw to Mackintosh (c.1820), and Lord Lansdowne to Mackintosh 24 April 1820. B.M.Add. MSS 52453.

5 J.B. Hay Inaugural Addresses by Lord Rectors of the University of Glasgow; to which are prefixed an historical sketch and account of the present state of the University Glasgow 1839. 23-40.

6 Reprint of Mr Campbell's Letter to Mr Brougham, on the subject of a London University, which appeared in 'The Times' of Feb. 9, together with Suggestions which appeared in the April number of the North Monthly Magazine. London 1825. See also H. Hale Bellot University College London, 1826-1926. London 1929. 14-26.

7 Ibid, Ch II, passim; J.H. Burns Jeremy Bentham and University College. London 1962.

Mackintosh was an original member of the Council of the University of London, and attended the first meeting on 22 December 1825; he was nominated as a member of the Education Committee, and personally charged with the drafting of the prospectus of the University (1).

The history of this draft throws some light on an early clash between members of the Council - in all probability, a clash between Mackintosh and Mill. In Mackintosh's original draft, the method of teaching was to be that of public lectures, with monitorial instruction by the pupils; the Professors were to derive their income from their pupils' fees, supplemented by taking in boarders. This system, it was suggested, had worked admirably elsewhere (2). The curriculum laid down did not emphasise vocational teaching; the greatest stress was on the moral sciences. Mackintosh devoted a brief, and characteristic, paragraph to each subject. Language, for example, was seen as both a vocational tool, and a focus for comparative study:

The structure of human speech is itself one of the worthiest objects of meditation; the comparison of various languages makes each of them better understood, and illustrates the affinity of nations. (3)

The plan of the courses should be compared with Mackintosh's sketch of his Haileybury course, although the University did, of course, range much more widely in the fields of science and medicine. The curriculum included Logic, possibly Rhetoric, the Physical Sciences, the Moral Sciences, divided into Ethics and Jurisprudence, the Law of England, the Law of Nations, Political Oeconomy and Medicine. The

1 Bellot *op.cit.* 29,52; Manuscript Minutes of the Proceedings of the Council of the University of London, I. f.3.

2 There is a copy of this draft, printed for private circulation among the members of the Council only, in *University College London. Prospectus. University of London n.d.*, bound in the volume of Documents and Notices, *University College London, 1825-9*, I, No.13, as a second copy of *Prospectus. University of London* 8 May 1826. This, the final product, was reprinted in the *Statement by the Council of the University of London, explanatory of the Nature and Objects of the Institution* London 1827.

Appendix No.1, 31-41. These items are Nos. 21, 22, and 37 in Bellot *op.cit.* Appendix I, 'Bibliographical Note on the College Records', 427-32.

3 *Prospectus, University of London.* 8 May 1826.

heart of the course, to Mackintosh, was evidently the 'philosophy of mind', on which the mental and moral sciences, jurisprudence, law, history, and political economy were all dependent. The curriculum, as drafted by Mackintosh, was approved, with very slight alterations, and became the basis on which the University planned its early courses (1). However, the plan as drafted bore very little resemblance to Bentham's Chrestomathia; it is not altogether surprising that Mackintosh's drafting was not immediately acceptable to other members of the Council, and the Education Committee. The report of the Education Committee on the prospectus suggested that the provision made for Professors to take students into their own homes should be omitted, and that about half the draft, in which Mackintosh explained the nature of the courses taught, would be omitted. The prospectus should deal only with the methods of instructions, and the particular benefits that the new university would bring, in particular the practical advantages of legal and medical training (2). In the final product, printed and circulated to the proprietors of the University, the suggestion that students should board with Professors was dropped; but the notes on the curriculum, with some minor but

1 'Report of the Education Committee. Read & referred to the building Committee. 27 April 1826'. Minutes of the Council, I, Appendix 2. In this report the initial division of the curriculum into 29 courses, first made by Mackintosh in his draft prospectus, printed in January 1826, was accepted; later amendments did not alter this fundamental pattern.

2 'Report of the Education Committee on the Prospectus read 6th May 1826 & approved up to the words 'for professorships''. Minutes of the Council, I, Appendix 5. James Mill was the convener, and one of the most active members of this committee; other members were Birkbeck, Brougham, Campbell, Dudley and Ward, Dr. O. Gregory, Grote, Lansdowne, and Henry Warburton. Bellot op.cit. 52. It is not known which members of the committee produced this report; the probability, from the record of their attendance generally, and from the nature of the amendments made to the initial draft, is that the principal objections came from Mill and Grote.

significant amendments remained. This brief conflict reflected two different views of the function of the university; but Mackintosh, like Campbell, soon lost interest in the venture (1). A new prospectus, written in 1827, soon superseded his own (2). However, Mackintosh's part in the designing of the curriculum, in the early years of the university, undoubtedly contributed to the strong intellectual influence of the Scottish universities on the new University of London.

Mackintosh's own philosophical writings may be seen as a commentary on, and later as a continuation of, the works of Dugald Stewart. Mackintosh's own reading in the field of philosophy during his residence in India, was, as has been seen, extensive (3); by the time that he returned to England in 1812, his moral philosophy was already formed. He was to draw heavily on the notes and reflections of this period for his later work. Two main interests occupied him within this field; the grounding of the science of ethics in the philosophy of the human mind, and the history of philosophy. Like Stewart, he saw this as the true, but neglected 'conjectural' history, the history of the human mind, the process of enlightenment as the basis for all historical narrative.

During his voyage from India, Mackintosh read, and made detailed notes on Stewart's Philosophical Essays, which had just been published (4). In this, Stewart attempted to clarify his earlier work, the Elements of the Philosophy of the Human Mind (5). His aim was to discover:

1 Mackintosh very soon ceased to attend the meetings of the Council, and for this reason, was dropped from it in January 1828. Minutes of the Council, I, f.141

2 Statement by the Council of the University of London, explanatory of the Nature and Objects of the Institution. London, 1827.

3 See above, VI, 194-6.

4 Philosophical Essays, Edinburgh, 1810.

5 Elements of the Philosophy of the Human Mind, Edinburgh, 1792.

The Laws of our Constitution, as far as they can be discovered by attention to the subjects of our consciousness; and afterwards to apply these laws as principles for the synthetical explanation of the more complicated phenomena of the understanding. (1)

Stewart followed Reid in all essentials. He accepted Reid's distinction between mind and matter, between the two fields of human knowledge, the physical and the moral sciences. For Reid's 'common-sense', he substituted the 'fundamental laws of belief'. It has been said that 'Hartley looms over his world with something of the size of Hume over Reid' (2). Certainly Hartley's speculations on the physiology of the brain, explaining the formation of intellectual and moral faculties through the existence of 'vibratiuncles', were a primary target; to Stewart their materialism appeared to go dangerously further even than the scepticism of Hume.

It has been shown that Mackintosh had followed Hartley in his teaching of moral philosophy in the lecture courses of 1799 and 1800.(3). His adaptation of the Hartleian doctrine, which had for him, as for James Mill, the appeal of 'Newtonian' simplicity, is essential to his version of the philosophy of mind. In the Philosophical Essays Stewart appeared, initially, to cast out the law of the association of ideas together with the 'vibratiuncles'. Mackintosh wrote:

My Hartleian principles are so mitigated by scepticism that I think I may consider myself as unprejudiced when I say that Mr Stewart's manner when speaking of Hartley in the Preliminary Discourse is unjust towards a great Philosopher, & tainted with a controversial flippancy which does not become a permanent philosophical work (4).

He agreed that Hartley's attempt to penetrate the physical workings of the brain had failed, but not that the law of association itself was

1 Philosophical Essays, 2-3.

2 S. . Grave The Scottish Philosophy of Common Sense, Oxford 1960.143.

3 See above, Ch.IV, 112-4.

4 Entry in journal, 16 November 1811, B.M.Add. MSS 52440.

discredited. He pointed out that in his last essays, 'On the Beautiful', 'On the Sublime' and 'On Taste', Stewart had 'made large strides towards the Hartleian doctrine' (1). Although Mackintosh praised the essays, he did not feel that Stewart had clarified the epistemological problem at the heart of moral philosophy:

He is not a Metaphysician of great vigour - His excellence consists in well ~~calculating~~ the Verulamian method of philosophising & constantly remembering that the Philosophy of Mind can only exhibit statements of general ~~interest~~ ^{facts}. (2)

Stewart's reverence for the Baconian method was fully shared by Mackintosh. Jeffrey's attempt to argue that the experimental method was not appropriate to the philosophy of mind received no support at all from Mackintosh (3).

In 1812, soon after his return from India, Mackintosh visited Edinburgh, where he met Jeffrey for the first time, and stayed with Dugald Stewart (4). One of his first articles for the Edinburgh Review was a discussion of some notes by Stewart on the case of James Mitchell, a boy born deaf and almost blind, who seemed to Stewart to offer a significant proof of the way in which certain perceptions and faculties were innate in a man deprived of sight and hearing (5). Mitchell's rudimentary sign language, for example, appeared to furnish evidence of a natural capacity for 'Artificial Language' (6). Mackintosh

1 Entry in journal, 17 November 1811, B.M.Add. MSS 52440.

2 Ibid.

3 F. Jeffrey 'Stewart's Life of Dr Reid', Edinburgh Review, III, January 1804, 269-287; Stephen The English Utilitarians, I, 152-3; Memoirs II, 152-3.

4 Ibid, II, 256-7.

5 'Account of a Boy born Blind and Deaf', Edinburgh Review, XX, November 1812 462-471; this was a review of Stewart's Some account of a boy born blind and deaf... with a few remarks and comments. From the Transactions of the Royal Society of Edinburgh (Edinburgh, 1812). Reprinted Stewart Works, IV, 300-70.

6 Stewart Works, IV, 292. Stewart was particularly interested in the development of treatment for the deaf and dumb in France, by the Abbe Sicard. Ibid, IV, 324-343. See also, on Reid's doctrine of natural signs, Grave, Scottish Philosophy of Common Sense, 151-161. For a very relevant discussion of contrasting attitudes to the treatment of the deaf in England and France, see J.P. Seigel 'The Enlightenment and the evolution of a language of signs in France and England', Journal of the History of Ideas XXX, 1969, 96-116, especially 113-6.

visited James Mitchell himself; his observations confirmed Stewart's findings (1). He shared Stewart's view of the importance of the case:

When an inlet of perception is entirely blocked up, we then really see the variation in the state of the compound, produced by the absence of part of its ingredients; and hence it has happened, that the cure and education of the deaf and blind... acquire a considerable though subordinate value, as almost the only great experiments which metaphysical philosophy can perform (2).

Stewart's view of the history of the human mind appeared in his Dissertation: exhibiting the Progress of Metaphysical, Ethical and Political Philosophy, published as a supplement to the Encyclopaedia Britannica, in two parts in 1815, and 1821 (3). Mackintosh reviewed both parts in two important articles in the Edinburgh Review (4).

He believed Stewart's work to be an important advance in:

the history of that philosophy which discovers the foundation of the sciences in the human understanding, and which becomes peculiarly connected with the practical sciences of moral and politics - because, like them, it has human nature for its object. It is that which is most immediately affected by the events and passions of the world; and on it depends the colour and fashion of all other researches (5).

But he did not accept Stewart's definition of his subject as stemming from the fundamental division between matter and mind:

the two most general heads which ought to form the ground-work of an Encyclopedical classification of the sciences and arts. (6)

To Stewart the earlier attempts of D'Alembert, Locke, and even Bacon, to classify knowledge according to its relation to the faculties of Memory, Reason and Imagination, was a clear confusion of the sciences and the arts. Mackintosh disagreed, preferring to take up Bacon's

1 Mackintosh to Stewart 5 November 1812, Stewart Works, IV, 359-61.

2 Edinburgh Review, XX, 469.

3 Edinburgh, 1st part 1815, 2nd part 1821. Supplements to 4th and 6th editions of the Encyclopaedia Britannica. Reprinted, in Stewart Works, I.

4 'Stewart's Introduction to the Encyclopaedia', Edinburgh Review, XXVII, September 1816, 180-244, and ibid., XXXVI, October 1821, 220-267.

5 Edinburgh Review, XXVII, 190.

6 Stewart Works, I. 19.

original scheme; he saw the inductive philosophy of the human mind as:

as much a science of fact as any part of Natural Philosophy. But 'ethics, ... is an answer to the question, 'What ought man to do?' - and this word 'ought' introduces the mind at once into a new region, and presents a conception, to which the sciences founded on experience have nothing akin. (1)

Mackintosh's distinction, primarily, was between the physical sciences, offering a field for empirical observation, and the moral sciences as defined by the element of obligation. But the whole issue of the classification of human knowledge did seem to him a secondary one.

Stewart had dismissed the middle ages as:

the most melancholy blank which occurs, from the first dawn of recorded civilisation, in the intellectual and moral history of the human race. (2)

Mackintosh, justifiably, pointed out some of the philosophic achievements of the period preceding the revival of letters. Aquinas' work illustrated the way in which the claims of philosophy had begun to challenge the domination of theology, and to provide 'the ethical code of Christendom'. The work of Duns Scotus, and Occam, however mistaken in its nominalism, equally carried within it the 'germ of all reformation in philosophy and religion' (3).

It was Stewart's intention to study the progress of philosophy through:

Those great lights of the world by whom the torch of science has been successively seized and transmitted. It is, in fact, such leading characters alone which furnish matter for philosophical history. To enumerate the names and labours of obscure or even secondary authors... would contribute but little to illustrate the origins and filiation of consecutive systems, or the gradual development and progress of the human mind. (4)

1 Edinburgh Review, XXVII, 194.

2 Stewart Works, I, 25.

3 Edinburgh Review, XXVII, 199-206.

4 Stewart Works, I, 22-3.

Mackintosh, too, saw the history of philosophy largely in terms of Bacon, Machiavelli, and Grotius, and his review turns mainly on the differing emphases given to these writers. Bacon is an unchallenged hero; his importance lay less in his metaphysics, or his scientific plans, than in a 'mode of philosophizing' which revolutionized the pursuit of knowledge. Mackintosh denied that Bacon's objectives were in any sense utilitarian; his practical end was the enlargement of man's command of nature, linked, though not always very clearly, with the pursuit of virtue. His projected history of philosophy would have displayed the range of the political and moral experiments of history, teaching by example. Few writers had followed him; attempts had been made by Ralph Cudworth, and, more acceptably, by Adam Smith, who had described:

the influence of the state of society, and the resolutions of government, as well as of the characters of individuals and nations on moral systems (1).

Mackintosh did, however, challenge Stewart's interpretation of the place of Machiavelli in the history of philosophy. As has been seen, to Mackintosh, the Discourses were not merely a collection of historical precedents, but an example of the drawing of conclusions from historical material which fitted Mackintosh's notion of 'conjectural history', and, at the same time, prescribed the 'ancient virtues' (2).

To Stewart, the most significant work of a barren period, the first half of the seventeenth century, was, without any doubt, that of Grotius, who gave a new direction to the science of mind, and especially to Scottish philosophy, from Carmichael to Adam Smith. The field of Grotius and of Pufendorf, that of Natural Jurisprudence, had, however, gradually widened into that of the Law of Nature and

1 Edinburgh Review, XXVII, 191.

2 Ibid, XXVII, 219.

Nations; and Stewart did not agree with Adam Smith that the law of nations represented 'the great principles of orality binding on all nations in their intercourse with each other'. The claims of international law had been overruled; it was, rather, the study of the customs and conventions existing between nations. Montesquieu, by studying the circumstances surrounding the development of different legal systems, had revealed the superficiality of Grotius, and the superiority of the 'theoretical' approach (1). To Mackintosh, of course, such denigration was unjustified. The significance of Grotius' work lay in his construction of an ethical system from 'those moral sentiments with which civilized men had sympathized from age to age' (2). Here the 'theoretical' approach would not have been appropriate. Practically, the influence of Grotius and his followers had been very great; the history of the law of nations was the record of the gradual acceptance by European nations of an enlightened moral code:

Moral appearances are always important realities. The very act of apparent submission to such humble authorities by the rulers of the world, implies improvement, and produces much more. Divested of all extraordinary claims on public deference, and having little advantage but that likelihood of right opinion which arises from the absence of interest and passion, the respect shown to them could proceed only from a growing reverence for that justice which they taught. Every such appeal was a lesson taught by the sovereign to his subjects, of the homage due from both alike to the supreme authority of reason. (3)

Slowly, acknowledgment of international law was creating a commonwealth of Europe and a European public opinion - so Mackintosh argued.

In his second volume, Stewart discussed the progress of metaphysics during the eighteenth century, by which he meant, largely, the problem of knowledge, and its treatment by Locke, Descartes, and their

1 Stewart Works, I, 170-197.

2 Edinburgh Review, XXVII, 233.

3 Ibid, XXVII, 236-40.

followers; and in his review Mackintosh attempted to throw some light on the 'fundamental laws of belief'. He argued that no philosopher had ever denied that the human mind had a certain basic structure; one major issue, for example, was man's conception of space and time, and the way in which his knowledge of these entered into his knowledge of the outside world. Kant, Stewart, and Tom Wedgwood (1) had all in their different ways emphasised the shaping of our perceptions by our notions of space and time; yet these notions were in themselves unknowable (2). There were certain general laws of the mind beyond which the philosopher could not go:

There is a sort of sullen reluctance to be satisfied with ultimate facts, which has kept its ground in the theory of the human mind long after it has been banished from all other sciences. (3)

It was possible that the mind had certain essential inclinations, without necessarily containing 'innate ideas'; he agreed with Stewart that this suggestion of Lord Shaftesbury's perhaps came nearest to the truth. (4)

Like Stewart, Mackintosh seemed concerned to rescue Locke from the reproach of being the founder of the 'selfish school'; the line of descent was to be traced rather through Hobbes, Gassendi, Hartley and Condillac (5). Locke's language had been misleading; his 'ideas of reflection' implied an acceptance of certain basic faculties of the human mind. Yet, to Mackintosh, the ethical implications of Locke's teaching had been unfortunate; Locke had suggested that the one inherent inclination which he recognised in man was the pursuit of happiness, implying that men carefully calculated the consequences of their actions. Locke's erroneous language on this had given rise to

1 See above, Ch.V, 145-6.

2 Edinburgh Review, XXXVI, 234-5; compare Reid's refutation of Locke, Grave op.cit. 14-16.

3 Edinburgh Review, XXXVI, 237.

4 Ibid, XXVI, 238; Stewart Works, I, 242-3.

5 Edinburgh Review, XXVI, 235, 241-2; Stewart Work, I, 224ff.

much mistaken speculation, including, recently, James Mill's two articles, on education and on government (1). But Mackintosh could not praise too highly Locke's method:

before Locke, there is no example in intellectual philosophy of an ample enumeration of facts, collected and arranged for the express purpose of legitimate generalization. (2)

Even his zeal against 'innate ideas' was largely inspired by his love of liberty, and his fear of attempts to impose orthodoxy; his method, his moderation, and his liberal spirit had contributed enormously to the enlightenment of opinion. The extravagance of his followers should not detract from his merits.

Leibnitz represented the opposite school of thought in Europe; the 'Speculative' as opposed to the 'Experimental'. Mackintosh was surprised that Stewart found such difficulty in sympathising with Leibnitz' attempt to refute Locke; he felt that there was some coincidence between the view of Locke taken in the Dissertation, and the view of Leibnitz. He quoted passages from a work by Leibnitz which Stewart did not appear to know:

'Perhaps the opinions of our able author (Locke) are not so far from mine as they appear to be. For, after having employed the whole of his first book against innate knowledge, taken in a certain sense, he acknowledges, in the beginning of the second, that there are ideas which do not originate from the senses, but which arise from reflection. Now, reflection is nothing but attention to that which passes within us; and the senses do not convey to us what we already possess within ourselves. Can it then be denied that there is much innate in the mind?' (3)

This is perhaps evidence of a sympathy towards 'idealist' opponents whose philosophical premises were rejected by common-sense theorists, but whose objectives were thought to be sound; Mackintosh noted the way in which Leibnitz' conventional optimism had a tendency to confirm

1 Edinburgh Review, XLVI, 239. The reference was to James Mill The Art of Government, reprinted from the Supplement to the Encyclopaedia Britannica London n.d.; idem The Art of Education, reprinted from the supplement to the Encyclopaedia Britannica. London n.d.

2 Ibid, XXXVI, 240

3 Ibid, XXXVI, 249. Mackintosh's reference was to Leibnitz Nouveaux essais sur L'Entendement Humain, Amsterdam, 1765.

established opinion. Stewart had developed the issue of Liberty versus Necessity. Mackintosh suggested that nothing more was needed but an appeal to reasonable men; all would agree, both that they held certain fundamental principles in common, and that they were influenced by their environment. To resolve this, Mackintosh would only answer that speculative principles had very little effect on everyday morality. The doctrine of predestination did not prevent Calvinist communities from leading an exceptionally moral life; though the scepticism of Hume, extending to the very structure of the human mind, might possibly, in its fatalism, conduce to Toryism. Montaigne, Bayle, and Hume, had all shared a sceptical philosophy and a Tory outlook (1).

Mackintosh drew a brief contrast between the disastrous materialism of Condillac, and the neglected, but extremely significant work of Buffier, who had pronounced for a disposition of the mind towards certain moral truths, without falling into Cartesian error (2). However, Mackintosh's treatment of Stewart's chapters on German philosophy was extremely cursory; he saw the 'metaphysical paroxysm' of Germany as no longer leading Europe in philosophical speculation (3). More surprisingly still, there is no discussion of Stewart's lengthy chapter on the history of metaphysics in Scotland in the eighteenth century. Probably, as Mackintosh pleaded in a footnote, he simply had insufficient time and space (4). The evidence of these reviews would suggest that Mackintosh was rather less concerned than Stewart with the philosophical sense made by the writers with whom he dealt. He looked for a general tendency to promote ethical standards, equated

1 Edinburgh Review, XXXVI, 257-60.

2 Edinburgh Review, XXXVI, 261. For the charge that Reid had plagiarized Buffier, see Grove, Scottish Philosophy of Common Sense, 8-9.

3 Edinburgh Review, XLVI, 263.

4 Ib'd, XLVI, 267.

with a political role in the defence of liberty. The articles, together with that on Mme de Staël's D. l'Allemagne, were translated into French. The translator clearly believed that the cause of Scottish philosophy in France would be served by this:

en suivant l'exemple de plusieurs hommes recommandables par leur savoir et leur dévouement à la science; qui ont consacré leurs talents et leurs veilles à faire passer dans notre langue les écrits de la plupart des philosophes Ecossais, dont les principes sages et la méthode sévère nous ont si puissamment aidés à briser les fers du sensualisme. (1)

Mackintosh's articles had also impressed Victor Cousin himself; he sent Mackintosh copies of his own early works, and in 1829 wrote that after the death of Dugald Stewart, the only man in Britain who would be able to understand his own translations of German Authors would be Mackintosh (2).

In 1828, Macvey Napier, editor of the Encyclopaedia Britannica, asked Mackintosh, since 'there is no man alive so capable of doing it justice' to continue Stewart's Dissertation (3); the original plan had been that the third volume should contain a survey of ethical and political philosophy in the eighteenth century. Mackintosh agreed to do this; however, he found by January 1829 that the task facing him was too great. Napier agreed that in the circumstances it would be best to limit his work to a 'complete sketch of Ethical History' (4). The work was rapidly written, and published in 1830 as a supplement to the 7th edition of the Encyclopaedia Britannica, to a shower of praise from Mackintosh's friends (5). It was later reprinted through the

1 Mélanges Philosophiques de Sir James Mackintosh. Traduit de l'anglais par L. Simon. Paris, 1829. xi.

2 J. Barthélemy-Saint Hilaire M. Victor Cousin, sa vie et sa correspondance 3 vols, Paris, 1895. III, 126, 129.

3 Napier to Mackintosh 22 June 1828, and Mackintosh to Napier, 10 August 1828. Correspondence of Macvey Napier, 55-6. But very much earlier, Mackintosh had hinted at his own interest in the plan 'Who can or will add the History of Morals and Politics to his Dissertation?' Mackintosh to Napier 8 January 1822. Ibid, 33.

4 Mackintosh to Napier 20 January and 3 February 1829. Ibid, 57-8.

5 Sismondi to Eulalie de Saint-Aulaire 11 July 1830, Epistolario, III, 93; Henry Hallam to Mackintosh 7 June 1830. N.L.S. MSS 5319 f.212.

initiative of William Whewell, who wrote in 1835:

I have got a glimpse, which I have long been wishing
an struggling for, of the inductive history of ethics.
Mackintosh's History is my main guide, but I think I can
both correct and extend his view... (1)

He persuaded the editors of the Encyclopaedia Britannica to publish
the Dissertation separately, with a preface by himself. (2)

The moral philosophy of the Dissertation was an attempt to answer
the question contained in Mackintosh's earliest writings: the
reconciliation of a principle of utility with a morality independent
of individual gratification. The key to the problem, he believed,
was to be found in the distinction between the criterion of right and
wrong actions, and the study of man's moral sentiments; and this, he
claimed, was an original point. (3). However, James Mill demolished
this claim devastatingly; he quoted from Hutcheson, from Smith and
others to show how this had been in fact a cardinal distinction for
them also (4). In form, the Dissertation was a cursory survey of the
contribution of individual moral philosophers to the evolution of
theories of the moral sentiments.

In a rapid sketch of ancient ethics, Mackintosh concentrated on
the way in which the schools of Epicurus and of Zeno, had each built
an ethical system on partial facets of the truth; where the Epicurean
equated virtue with a tendency to increase happiness, the Stoic laid
exclusive stress on the moral sentiments. And Mackintosh allowed
his own preference to show, for

for that noble school which preserved great souls untainted
at the court of dissolute and ferocious tyrants. (5)

But 'the genius of Greece fell with liberty', and the contest between
scepticism and dogmatism destroyed the ancient system of philosophy.

1 W. Whewell to Rev. R. Jones 9 May 1835. I Todhunter William Whewell D.D.
Master of Trinity College, Cambridge. An account of his writings with
selections from his literary and scientific correspondence 2 vols.
London 1876. II, 211-2.

2 Whewell to Rev. R. Jones 26 May 1835. Ibid, II, 213-5.

3 Dissertation, 62; see also above, Ch. VII, 226.

4 Fragment on Mackintosh, 1-19.

5 Dissertation, 84.

Yet a 'subterranean current' of philosophy had flowed through the middle ages, and again Mackintosh seemed anxious to rehabilitate medieval philosophy, and especially that of Aquinas, in many respects remarkably modern:

It is very remarkable, though hitherto unobserved, that Aquinas anticipated those controversies respecting perfect disinterestedness in the religious affections which occupied the most illustrious members of his communion four hundred years after his death; and that he discussed the like question respecting the other affections of human nature with a fulness and clearness, an exactness of distinction, and a justness of determination, scarcely surpassed by the most acute of modern philosophers. (1)

The limitations of scholastic writers, cut off as they were from all literature and the arts, and from all human emotion by the institution of celibacy, prevented any further development in ethical philosophy, in spite of the modernity of the conflict between Nominalism and Realism. Predictably, Mackintosh saw the moral philosophy of the sixteenth century theorists of international law as opening a new era; Grotius' work crystallised the development of moral philosophy in the age before Hobbes (2).

The writings of Hobbes were a landmark in the history of moral philosophy; Hobbes' ethical ideas were entirely interwoven with his political principles, together forming 'the selfish system in its harshest and coarsest shape' (3). Hobbes' errors in the philosophy of mind had been extremely influential; he had confused the perception of an object with the pleasure or pain that was felt, and had therefore no conception of the disinterested sentiments which could exist without either pleasure or pain being felt. He seemed to rule out the very social affections:

1 Ibid, 98.

2 Ibid, 109-115.

3 Ibid, 128.

From his philosophical writings it would be impossible to conclude that there are in man a set of emotion, desires, and aversions, of which the sole and final objects are the voluntary actions and habitual dispositions of himself and of all other voluntary agents; which are properly called Moral Sentiments...(1)

Moral philosophy attempted to find the answer to the materialism of Hobbes. Mackintosh traced the work of those writers, who, very generally, had argued that man's reason, according to the divine scheme, gave him an innate knowledge of moral values: Cumberland, Cudworth, Clarke. But in these he found the same defect:

there is still an important part of our moral sentiments which it passes by without an attempt to explain them. Whence, on this scheme, the pleasure or pain with which we review our own actions, or survey those of others? What is the nature of remorse? Why do we feel shame? Whence is indignation against injustice? These are surely no exercise of reason... It is a fatal objection to a moral theory, that it contains no means of explaining the most conspicuous, if not the most essential, parts of moral approbation and disapprobation. (2)

There was another school in this debate, that which believed that the awareness of moral values in man had to spring directly from a moral sense, comparable to other senses. In surveying the genealogy of this view, through Shaftesbury, Hutcheson, and Butler, Mackintosh began, eclectically, to assemble his own moral theory.

The significance of Lord Shaftesbury's work was that it contained:

more intimations of an original and important nature on the Theory of Ethics, than perhaps any preceding work of modern times. (3)

Shaftesbury had suggested the existence of certain inclinations in man to take pleasure in the happiness of others; more important, he had written on a 'reflex sense' which enabled certain dispositions of the mind to be in themselves an object of affection - hence the possibility of the love of virtue. Generally, he had looked for the source of the

1 Ibid, 130.

2 Ibid, 151. See, on this controversy, generally, D.D. Raphael The Moral Sense Oxford, 1947; W. Hudson Ethical Intuitionism London, 1967.

3 Dissertation, 163.

moral sentiments not in the reason, but in the affections.

Mackintosh found a further foundation for his ethical theory in Bishop Butler, to whom he perhaps owed most of all. In Butler, he found an emphasis on the disinterested passions, disinterested in the same way that mere animal appetites sought their own ends, hardly deserving the epithet 'selfish':

Resentment is as disinterested as gratitude or pity, but not more so. Hunger or thirst may be, as much as the purest benevolence, at variance with self-love. A regard to our own general happiness is not a vice but in itself an excellent quality... The weakness of the social affections, and the strength of the private desires, properly constitute selfishness; a vice utterly at variance with the happiness of him who harbours it, and, as such, condemned by self-love. (1)

Mackintosh arrived here at a definition of the relationship between happiness and self-love which approximated to Butler's notion of 'cool principle of self-love' (2). An informed pursuit of happiness did not imply a calculation of gratifications; but it was not, equally, the supreme faculty governing the actions of the individual. In Butler's work Mackintosh found also the principle of the supremacy of the conscience:

As self-love is superior to the private passions, so conscience is superior to the whole of man. (3)

Mackintosh found no errors in Butler's philosophy; but he believed that it contained certain unexplored premises. Butler had made no attempt to explain the origins and the working of the moral sentiments; nor had he illustrated how self-love was in fact a secondary principle derived from the combination of reason and habit, acting upon the passions. Moreover the conscience had to be seen as fully independent of all desires, having as its object only the will itself:

1 Ibid, 193.

2 See D.D. Raphael British Moralists 1650-1800, 2 vols, Oxford, 1969. I, 364-373.

3 Dissertation, 195.

The union of universality, immutability, and independence, with direct action on the will, which distinguishes the moral sense from every other part of our practical nature, renders it scarcely metaphorical language to ascribe to it unbounded sovereignty and awful authority over the whole of the world within; ... justified those ancient moralists who represent it as alone securing, if not forming, the moral liberty of man... (1)

And even Butler still offered no answer to the need to distinguish the criterion of right and wrong actions.

Francis Hutcheson, 'the father of speculative philosophy in Scotland', had followed Butler on the existence of the disinterested affections, and the moral sense; but Mackintosh defended against Hutcheson's arguments the place of self-love within a theory of the moral sentiments (2). In considering, very inadequately, Hume as a moral, rather than a metaphysical philosopher, Mackintosh again found close similarities, in Hume's ideas on sympathy, benevolence, and the notion of general utility as a ground of moral distinctions (3). As for Adam Smith, the Theory of Moral Sentiments was a much neglected book; his investigation of the workings of the principle of sympathy entitled him to a very high place among moral philosophers. Yet he conceived sympathy as a static principle, which did not grow and develop with the affections. Sympathy was rather a single element entering into the formation of the conscience; it did not possess the sovereign authority of the conscience itself (4).

Mackintosh believed that the defects in the philosophy of Butler and of Smith were to be supplied by his own adaptation of David Hartley's law of the association of ideas:

the difference between Hartley and Condillac, and the immeasurable superiority of the former, are chiefly to be found in the application which Hartley first made of the law of association to that other unnamed portion of our nature with which morality more immediately deals;

1 Ibid, 201.

2 Ibid, 203-208; see Raphael British Moralists, I, 274-5.

3 Dissertation, 230-1.

4 Ibid, 232-42.

that which feels pain and pleasure, is influenced by appetites and loathings, by desires and aversions, by affections and repugnances. (1)

Hartley's language was misleading; the phrase 'association of ideas' did not appear to include both ideas and emotions. If this had been made clear, the superiority of Hartley's philosophy would have been evident. Through the progressive association and fusion of the simple instinctive and intellectual qualities, grew man's highest and most complex faculties. 'Rational self-love' grew from the balance of reason, and the simple self-regarding passions; general benevolence grew from the fusion of sympathy, pity, and the social affections. Most important of all:

it is proper to observe that a most important consideration has escaped Hartley, as well as every other philosopher. The language of all mankind implies that the moral faculty, whatever it may be, and from what origin soever it may spring, is intelligibly and properly spoken of as ONE. (2)

The different moral sentiments would, as each became sought, disinterestedly, for its own sake, compound, and, as they fused, the conscience would emerge supreme (3).

Armed with this moral theory, a combination of Hartley and Butler, Mackintosh assaulted Bentham, and James Mill, who had made a very different use of the law of association (4). Bentham was accused again of the cardinal sin of confusing the motives of action and the criterion by which they were to be judged; Mill exposed the crudity of Mackintosh's argument at length (5). Mackintosh's account of utilitarianism was exceptionally slight; he merely dismissed it with the usual tirade against utility as a motive to particular action:

1 Ibid, 249-50.

2 Ibid, 261.

3 Ibid, 284-313.

4 See Halévy Growth of Philosophic Radicalism 433ff; I. Cumming The second founder of association psychology. University of Auckland, Bulletin no. 69. Education series no. 4.

5 Fragment on Mackintosh, 120-301; Mill also pointed out that Mackintosh had clearly not read his own Analysis of the Phenomena of the Human Mind (only just published, 2 vols, London, 1829. Ibid, 220.

Andrew Fletcher of Saltoun would not have forsaken virtue even for the public advantage. Again, James Mill's articles 'On Education', and 'On Government' were cited as the current examples of mistaken hypothesizing from a single assumption. Thomas Brown was close to another version of utilitarian error; in replacing the term 'association' by 'suggestion', he had gone far towards denying the existence of a supreme moral faculty. Ideas might be suggested; but the moral sentiments could only be compounded (1).

Still, at the end of his work, Mackintosh was faced with the need to resolve the question with which, apparently, no moral philosopher had satisfactorily dealt: the criterion of right and wrong actions. Clearly, he agreed a beneficial tendency to mankind was a constant element in all right actions:

All virtuous acts are thus admitted to be universally beneficial; morality and the general benefit are acknowledged always to coincide. It is hard to say, then, why they should not be reciprocally tests of each other, though in a very different way; - the virtuous feelings, fitted as they are by immediate appearance, by quick and powerful action, being sufficient tests of morality in the moment of action, and for all practical purposes; while the consideration of tendency to general happiness, a more obscure and slowly discoverable quality, should be applied in general reasoning, as a test of the sentiments and dispositions themselves. (2)

This, then, was the climax of Mackintosh's initial distinction. The diversity of moral ends meant that virtuous actions could be pursued for their own sake; but from a wider point of view, the moral sentiments could be tested by the general criterion of utility.

There are surprising omissions from the Dissertation; Thomas Reid is perhaps the greatest. In Mackintosh's study of Dugald Stewart, he repeats some of the original criticisms of the Philosophical Essays:

1 Dissertation 347-52. Mackintosh's language here is exceptionally obscure.

2 Ibid, 356.

yet although Stewart had rejected Hartley, he accepted the disinterestedness of human motives. But his talents did not lie in ethical philosophy. Mackintosh had intended to deal with French and German philosophy (1); but he had time only for brief remarks. He praised Royer-Collard, who had introduced Scottish philosophy into France, as 'the most philosophical orator of his nation' (2). His disciple, Cousin, had turned to Germany, similarly to aid the war against scepticism:

It may be questioned whether he found in Kant more than the same vigorous protest under a more systematic form, with an immense nomenclature, and constituting a philosophical edifice of equal symmetry and vastness. (3)

A few pages at the end of the Dissertation are spared to Kant; the emphasis is laid on the similarity between his ethical theory, and that of the English and Scottish moralists. However, for Kant, the 'practical reason' had more in common with the intellectual powers than with the sentiments. (4) But the resemblance was close.

On our principles, therefore, as much as on those of Kant's, human nature is capable of disinterested sentiments. For we too allow and contend that our moral faculty is a necessary part of human nature, - that it universally exists in human beings, - that we cannot conceive any moral agents without qualities which are either like, or produce the ~~same~~ ^{like} effects. (5)

And with further advances in moral knowledge, the differences would be resolved.

Cousin charitably praised the Dissertation, to which Sir William Hamilton had drawn his attention, as:

1 Mackintosh to Macvey Napier 1 May 1829. Correspondence of Macvey Napier, 58-9.

2 Dissertation, 318-20.

3 Ibid, 318.

4 Ibid, 390 These reflections may be compared with those in Mackintosh's Journal, from 28 March to 6 May 1805. B.M.Add. MSS 52436. Much of the incoherence of Mackintosh's language in his 'General Remarks' seems due to the fact that it was very closely derived from these fragmentary notes of 1805.

5 Dissertation, 390-1.

un peu superficielle,... un livre utile... qui peut
populariser bien des vérités philosophiques auprès
des gens du monde. (1)

McIntosh's writings on philosophy did to some extent deserve James
Mill's attacks; the Dissertation was tediously moralistic,
conventional in its instances of classic heroism, describing
individual philosophers discursively, with little close analysis
of their moral theory. But, for McIntosh, ethical and political
theory were closely interwoven; the task of the philosophy of mind
was to build a foundation for the simultaneous pursuit of liberty
and virtue.

1 Sir William Hamilton to Cousin 23 October 1830, Cousin to Hamilton
10 February 1831. Barthélemy-Saint Hilaire 1. Victor Cousin, sa vie
et sa correspondance, III, 221-5.

CONCLUSION.

James Mackintosh left behind him no body of given texts; nor did he attempt to speak for any social group. He wrote as a man of no particular social class, accepted in the political world for his own achievements. These were fragmentary; and yet his own influence and reputation were high. In order to understand this, his writings and career have to be studied within their immediate intellectual and political context. Many contemporaries felt that Mackintosh, throughout his life, was gradually returning to the principles of the Vindiciae Gallicae; the thought occasionally appealed even to Mackintosh himself, though at no time after 1812 did his political thought approach the radicalism of 1791 (1). It could never be maintained that Mackintosh acted with any sort of political consistency; the progress of his career, the state of the party, his own personal indolence, were as important in determining his political actions. Nevertheless, there are certain recurring ideas to be found in his political reactions; if these are traced, it is possible to see something of the transition between the old 'republican' tradition, and nineteenth century liberalism.(2)

1 Francis Jeffrey to William Emsay, 25 August 1830. Monteagle Papers, 13370 (9). National Library of Ireland; John Allen to Macvey Napier, 29 July 1835, Selections from the Correspondence of Macvey Napier, 164.
 2 See, for an exposition of the difficulties of intellectual biography, Q. Skinner, 'Meaning and Understanding in the History of Ideas', History and Theory, 8, 1969, 3-53. See also J. Dunn, 'The Identity of the History of Ideas', Philosophy, 43, 1968, 85-104; J.G.A. Pocock, 'The History of Political Thought: a methodological enquiry', in Philosophy, Politics and Society. Second series. Edited by P. Laslett, and W.G. Runciman.

Discussion of nineteenth century liberalism very often centres on Isaiah Berlin's distinction between negative and positive concepts of liberty. The tradition to which Constant, de Tocqueville, and John Stuart Mill belonged, assumed that a society was free only if it preserved certain frontiers against the encroachment of the state on the liberty of the individual. Absolute sovereignty, whether popular or monarchical, was tyrannical by its very nature. Such an assumption was limited to that body of liberal thinking which emerged from the constitutional defences of aristocracy, and was concerned almost exclusively with the political and moral world. The 'liberal conception of man as a desiring, a satisfaction-seeking animal'(1) stemmed from utilitarian radicalism, and, fundamentally, a different epistemology.

Clearly, James Mackintosh wished also to reject absolute sovereignty in any form. His writings and speeches were full of the need to erect an alternative, impartial, criterion of political morality. He distrusted what he maligned as the simple rational constructions of radicals and democrats; yet he did believe in the possibility of a political science, one based on 'Newtonian' method. His concern for research and experiment in every field, from comparative philology to criminal law, implied that the political scientist should absorb the full complexity of all the evidence available to him, before producing constructive hypotheses. The experimental method could, however, be applied to all branches of knowledge, except ethical philosophy. The principles of morality were fixed and universal; and these principles, known through the 'moral sense' of the individual, were in the last resort the only check on arbitrary government. Like Royer-Collard, Mackintosh argued that the voice of reason and justice would emerge, miraculously,

1 K. Minogue, The Liberal Mind. London, 1963, 39.

from the assembled interests of the people, deliberating together. Though local branches of the law might vary, above it the law of nations embodied a universal and international morality. For the French doctrines, the July Revolution of 1830 ended the fiction of the sovereignty of reason; in England, the corresponding myth faded, after 1832, with the Old Whig tradition.

Such a frontier against the state could not, however, be entirely negative in its role; it demanded that the individual be free to observe certain moral rules. The prescription offered was neither constitutional nor social, but moral; in this anachronism lay the Whig weakness. Mackintosh's defence of the representative system was primarily that it stimulated the public spirit of the citizens; morality demanded that the citizen be involved within his community, developing his own faculties to the full, in order to curb the passions and the ignorance of the multitude. The same development of thought is found in de Tocqueville, equally concerned to arouse a realization of the value of liberty, a liberty that would allow men to realise their moral potential. Mackintosh was one of those English Whigs who looked at democracy in America with greater sympathy than democracy in England; he was interested particularly in the 'propitious circumstances' which made it there a viable form of government. While radicals saw the triumph of democracy, Mackintosh saw, already, the working of adequate safeguards against the dangers of democracy, grown from the American environment (1).

Such an ethical liberalism hardly fits Berlin's definition. It accords better with the genealogy of Whiggism drawn up by Lord Acton, who defined it rather as 'morality applied to politics', a set of

1 See J. Lively The Social and Political Thought of Alexis de Tocqueville, Oxford, 1962. 10ff; D.P. Crook American Democracy in English Politics 1815-1850. Oxford, 1965. 22-6, 88-93.

principles, 'bound by no interest, attached to no class'.⁽¹⁾ Mackintosh, as a Whig of this school, was more abstract and doctrinaire than most; he had very little in common with the radicals and democrats of the 1820's and 1830's. He never concerned himself with the major economic and social developments of his time, or with the possibility of government's response. His interest was exclusively in the moral response of the individual. Even his greatest work, the reform of the criminal law, was connected with one of the key moral problems of the Enlightenment, the right to punish, and the possibility of moral reformation. There is a temperamental complacency about this political philosophy. There is also, only too clearly, a fundamental failure to offer a constructive, or even relevant, political programme. In the field of political science, the Scottish approach could have been of great value; but the remedies offered for political and social problems were not practical but moral. Bentham offered both a philosophy and a model of government. In their greatest hour, in the early 1830's, the Whigs were inspired not by their own tradition, but by Benthamite radicalism.

¹ G.E. Fasnacht *Acton's Political Philosophy. An Analysis.*
 London, 1952. Appendix VII, for Acton's history of Whiggism.

ABBREVIATIONS.

Bib.pub. et univ. de Genève.	Bibliothèque publique et universitaire de Genève.
B.M.Add. MSS.	British Museum Additional Manuscripts.
D.N.B.	<u>Dictionary of National Biography.</u>
Eur. MSS.	European Manuscripts (India Office Records.)
H.M.S.	Home Miscellaneous Series (India Office Records.)
I.O.L.	India Office Library.
I.O.R.	India Office Records.
Jud. Procs.	Judicial Proceedings of Bombay, India Office Records.
<u>Memoirs</u>	<u>Memoirs of the Life of the Right Honourable Sir James Mackintosh.</u> Edited by his son, Robert James Mackintosh. Second edition. 2 vols. London, 1836.
N.L.S.	National Library of Scotland.
P.D.	<u>Parliamentary Debates.</u>
P.P.	<u>Parliamentary Papers.</u>
Pub. Procs.	Public Proceedings of Bombay, India Office Records.
P.R.O., T.S.	Public Record Office, Treasury Solicitor's Papers.
<u>Works.</u>	<u>The Miscellaneous Works of the Right Honourable Sir James Mackintosh</u> (edited by R.J. Mackintosh). 3 vols. London, 1846.

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Dumont Papers. MSS 33/3

MSS 1951, 1959.

Autograph letters, Collection Eynard.

Bodleian Library.

Abinger Papers, Film MSS 72-6.

MSS Eng. lett. d14

MSS Don. d95.

MSS Eng. Misc. c398.

Add. MSS c89.

British Museum.

Mackintosh Papers. 34487-34526, 52436-52453.

Bentham Papers, 33545.

Fox Papers. 47560, 47564, 47570-1, 47578.

Holland House Papers, 51510, 51533, 51545, 51585, 51653-7,
51950-3, 52182, 52187, 52189-90.

Leyden Papers, 26605, 26579, 26566.

Liverpool Papers, 38295-6.

Napier Papers, 34613-4, 34616-7.

Peel Papers, 40347, 40385.

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36462, 36364, 37337, 39945, 41312.

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MSS La II, 475,646.

D.1.77.

Dc.4.41,102.

Dc. 8.178.

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Dissertations of the Royal Medical Society (Read while on
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India Office.

India Office Records.

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 825,487-8.

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2521-2,2528,3112,3134,3219,3700,3902,3906,3908,
5310,5317,5319,6360,6366,8886.
Accessions Nos. 3398, 3639.
Minto Papers M 139,186,337,449.

Public Record Office.
Treasury Solicitor's Papers, General Series, 11/951/3494 to
11/962/3508. 11/429/1357.
Russell Papers. 30/22/1A-1C.

Scottish Record Office.
Bught Papers G.D. 23/6/509.
Fraser-Mackintosh Collection. Boxes 48,62.
Melville Castle Muniments. G.D. 51/3/2.
Seafield Muniments. G.D. 248/362.

University College London.
Bentham Papers, Box 109.
Brougham Papers.
Letterbook of Isaac Lyon Goldsmid.
Rogers Papers.
Papers of the Society for the Diffusion of Useful Knowledge.
MSS Minutes of the Proceedings of the Council of the University
of London.

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Canning Papers, Archives Department, Leeds Central Library.
Papers in the possession of the Hon. Miss Anne Farrer.
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'Fondo Sismondi', Biblioteca Comunale 'Carlo Magnani', Pescia.
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A B S T R A C T

Sir James Mackintosh was educated at the universities of Aberdeen and Edinburgh; throughout his life he retained an outlook derived from the moral and political speculation current in Scotland in the late eighteenth century. In the Vindiciae Gallicae, in 1791, he offered a radical defence of the French Revolution; gradually, however, he became disillusioned with the progress of events in France, and with radicalism in Britain. He proclaimed his conservative convictions in 1799, in a series of lectures at Lincoln's Inn; he was later rewarded by Addington's ministry with the post of Recorder of Bombay. During his residence in India, Mackintosh opposed his Whig views to the power of the East India Company, and helped also to stimulate an interest in the history and literature of a quite different culture. On returning to Britain, he entered Parliament, where his greatest achievement was to be the part played in the reform of the criminal law. He also took an informed interest in the progress of parliamentary reform, in the defence of civil liberties, and in foreign and colonial affairs. His intellectual interests were wide-ranging. As a historian, he gathered together a vast range of materials for a projected history of England, of which only a fragment was posthumously published; as a philosopher, he left only a superficial sketch of the history of ethics. He succeeded in few of the aims that he set himself; yet his ideas and activities are particularly revealing of the Scottish influence on British politics in the early nineteenth century.